# TRANSCRIPT OF RECORD.

## SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1900.

No. 687. 251.

I. STANTON CARTER (ON BEHALF OF OBERLIN M. CARTER), APPELLANT,

*vs.*

ROBERT W. McCLAUGHRY, WARDEN OF THE UNITED STATES PENITENTIARY AT FORT LEAVENWORTH, KANSAS.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF KANSAS.

FILED FEBRUARY 14, 1901.

(18,052.)

# (18,052.)

## SUPREME COURT OF THE UNITED STATES.

### OCTOBER TERM, 1900.

No. 567.

I. STANTON CARTER (ON BEHALF OF OBERLIN M. CARTER), APPELLANT,

*vs.*

ROBERT W. McCLAUGHRY, WARDEN OF THE UNITED STATES PENITENTIARY AT FORT LEAVENWORTH, KANSAS.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF KANSAS.

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1 THE UNITED STATES OF AMERICA, *ss:*

To Robert W. McClaughry:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, now being holden at Washington, D. C., within 30 days from the service upon you of this citation, pursuant to an appeal filed in the clerk's office of the circuit court of the United States for the district of Kansas, wherein I. Stanton Carter is appel-ant and Robert W. McClaughry is the respondent, to show cause, if any there be, why the order and judgment in said bill named should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, this 24th day of December, 1900.

WILLIAM C. HOOK,
*District Judge.*

Service acknowledged this 28th day of Dec., 1900.

I. E. LAMBERT,
*U. S. District Att'y, Representing Robert W. McClaughry.*

1½ [Endorsed:] No. 7849. Oberlin M. Carter, on the petition of I. Stanton Carter, petitioner, *vs.* Robert W. McClaughry. Citation. Filed Dec. 24, 1900. Geo. F. Sharitt, clerk.

2 In the Circuit Court of the United States, District of Kansas, Fist Division, Sitting at Leavenworth.

| | |
|---|---|
| OBERLIN M. CARTER, on the Petition of I. Stanton Carter, Petitioner, *vs.* ROBERT W. MCCLAUGHRY. | Application for a Writ of *Habeas Corpus.* |

To the honorable the circuit judges of the United States in the eighth judicial circuit sitting:

Your petitioner, I. Stanton Carter, respectfully shows unto your honors that he is the brother of Oberlin M. Carter, who, prior to the 29th day of September, A. D. 1899, was a captain in the Corps of Engineers of the United States Army, and who is now imprisoned and restrained of his liberty by one Robert W. McClaughry, the warden of the United States prison at Fort Leavenworth, Kansas; and that the place of said confinement is in said prison at said Fort Leavenworth.

Your petitioner further shows that said Carter is imprisoned and restrained by virtue of a sentence imposed upon him by a general court-martial of the United States, convened by the President of the United States, at Savannah, Georgia, which said sentence is as follows:

"And the court does therefore sentence the accused Captain Oberlin M. Carter, Corps of Engineers, United States Army, to be dismissed

from the service of the United States, to suffer a fine of $5,000, to be confined at hard labor at such place as the proper authority may direct for five years, and the crime, punishment, name and place of abode of the accused to be published in the newspapers in and about the station and the State from which the accused came or where he usually resides."

That said sentence was approved by the Secretary of War and approved and confirmed by the President of the United States on the 29th day of September, 1899.

That the warrant or mittimus under which the said McClaughry detains the said Carter, as aforesaid, is the following order from the headquarters of the army, that is to say:

3 *General Orders No.* 172.

HEADQUARTERS OF THE ARMY,
ADJUTANT GENERAL'S OFFICE,
WASHINGTON, D. C., *September* 29, 1899.

Before a general court-martial which convened at Savannah, Georgia, pursuant to special orders No. 282, of December 2, 1877; special orders No. 306, of December 31, 1897, and special orders No. 1, of January 3, 1898, from headquarters of the army, adjutant general's office, and of which Brigadier General Elwell S. Otis, United States Army, was president, and Colonel Thomas F. Barr, assistant judge advocate general, was judge advocate, was arraigned and tried—

Captain Oberlin M. Carter, Corps of Engineers.

Charge I.—"Conspiring to defraud the United States, in violation of the 60th article of war."

Specification I.—"In that Captain Oberlin M. Carter, Corps of Engineers, United States Army, devising and intending to defraud the United States, and to aid the Atlantic Contracting Company, a corporation, and John F. Gaynor, William T. Gaynor, Edward H. Gaynor, Anson M. Bangs, and divers other persons, all of whom were likewise with him, the said Carter, devising and intending to defraud the United States, did, on or about August 1, 1892, and thereafter to June 6, 1896, with the corporation and persons named, unlawfully combine and conspire to defraud the United States of divers large sums of money by aiding the said corporation and persons to obtain the allowance and payment of certain false and fraudulent claims indicated by the payments hereinafter alleged to have been made; and in pursuance of the said conspiracy the said Captain Oberlin M. Carter, in the months of August and September, 1892, being the officer of the United States in local charge of the river and harbor district usually called the Savannah district, and of the improvement by the United States of rivers and harbors in said district, did, with the knowledge and consent of the said other parties named, so advertise for proposals for contracts for certain works of improvement in Cumberland sound, in said district, and so manage and conduct such advertising and the matter of giving out information in regard to the contract to be let, and the matter of

receiving proposals and awarding the contract, as to enable the said Edward H. Gaynor to secure the contract for said work and to have the same entered into by the United States with him, September 16, 1892; and in further pursuance of the said conspiracy
4 the said Edward H. Gaynor afterwards, to wit, from about the 16th day of September, 1892, to the 25th day of May, 1893, did furnish and put into said work certain mattresses, stone and other material which were different in kind and character from the mattresses, stone and other material contracted for in said contract, and very much less costly to the said Edward H. Gaynor, as well as of less value to the United States, which said mattresses, stone and other material so furnished and put into the work the said Captain Carter, in further pursuance of said conspiracy, did receive and accept and cause to be received and accepted for the United States as and for the mattresses, stone and other material contracted for, and did cause payments to be made out of the moneys of the United States to the said Edward H. Gaynor on account of the said furnishing and delivery of the same, and as if the said mattresses, stone and other materials had been such as were stipulated for in the contract, and at the same rate, cost and price as if they had been, as follows, and on or about the dates named: November 17, 1892, $1,713.23; December 16, 1892, $21,102.67; December 31, 1892, $24,529.95; January 5, 1893, $493.59; February 4, 1893, $20,274.07; March 6, 1893, $16,433.14; April 3, 1893, $14,218.86; May 2, 1893, $27,436.06; May 22, 1893, $9,337.85, and May 25, 1893, $26,706.46.

"And in further pursuance of the said conspiracy the said Captain Carter, about August, September and October, 1892, did advertise for proposals for a contract for improving the harbor at Savannah, Georgia, in said river and harbor district, and did so manage and conduct the matter of such advertising and the matter of giving out information in regard to the contract to be let, and the matter of receiving proposals and awarding the contract, as to enable the said The Atlantic Contracting Company to secure the contract for said work and to have the same entered into by the United States with it October 22, 1892; and in further pursuance of the said conspiracy the said The Atlantic Contracting Company, from about the 22d day of October, 1892, to the 4th day of May, 1895, did furnish and put into said work certain mattresses, stone, and other material which were different in kind and character from the mattresses, stone and other material contracted for in said contract and very much less costly to the said The Atlantic Contracting Company as well as of less value to the United States, which said mattresses, stone and other material so furnished and put into the work, the said Captain Carter, in further pursuance of said conspiracy, did receive
5 and accept and cause to be received and accepted for the United States, as for the mattresses, stone and other material contracted for, and did cause payment to be made out of the moneys of the United States, as to the said The Atlantic Contracting Company, on account of the said furnishing and delivery of the same, and as if the said mattresses, stone and other material had been such as were stipulated for in the contract, and at the same rate, cost and

price as if they had been, as follows, and on or about the dates named: November 17, 1892, $3,265.61; December 3, 1892, $15,000; December 16, 1892, $8,507.45; December 31, 1892, $20,000; January 10, 1893, $25,416.81; February 4, 1893, $42,722.83; February 8, 1893, $15.71; March 6, 1893, $44,985.47; March 31, 1893, $38,076.11; April 3, 1893, $20,584.51; May 2, 1893, $30,000; May 31, 1893, $6,105.69; July 3, 1893, $5,968.18; July 3, 1893, $34,177.94; July 3, 1893, $46,592.39; August 3, 1893, $57,013.64; September 1, 1893, $97,159.99; October 2, 1893, $59,554.84; November 3, 1893, $52,452.22; December 1, 1893, $85,752.28; January 2, 1894, $44,175.02; January 5, 1894, $27,057; February 2, 1894, $75,118.71; March 1, 1894, $44,630.22; July 7, 1894, $202,481.40; September 8, 1894, $481,933.67; October 2, 1894, $88,922.63; November 9, 1894, $44,303.92; December 5, 1894, $38,903.72; January 11, 1895, $39,368.67; February 1, 1895, $31,659.28; March 2, 1895, $25,612.62; April 5, 1895, $63,656.50, and May 4, 1895, $19,860.08.

"And in further pursuance of the said conspiracy the said Captain Carter, about January, February and March, 1893, did advertise for proposals for a contract for improving Jekyl creek, Georgia, in said river and harbor district, and did so manage and conduct the matter of such advertising and the matter of giving out information in regard to the contract to be let, and the matter of receiving proposals and awarding the contract, as to enable the said The Atlantic Contracting Company to secure the contract for said work, and to have the same entered into by the United States with it, March 1, 1893; and in further pursuance of said conspiracy the said The Atlantic Contracting Company, from about the 1st day of March, 1893, to about the 3d day of July, 1893, did furnish and put into said work certain mattresses, stone and other material which were different in kind and character from the mattresses, stone and other material contracted for in said contract, and very much less costly to the said

6 The Atlantic Contracting Company as well as of less value to the United States; which said mattresses, stone, and other material so furnished and put into the work the said Captain Carter, in further pursuance of the conspiracy, did receive and accept, and cause to be received and accepted, for the United States and as and for the mattresses, stone, and other material contracted for, and did cause payments to be made out of the moneys of the United States to the said Atlantic Contracting Company on account of said furnishing and delivering of the same, and as if the said mattresses, stone, and other material had been such as were stipulated for in the contract, and at the same rate, cost, and price as if they had been, as follows, and on or about the dates named: June 3, 1893, $3,309.40; July 3, 1893, $3,595.38, and July 3, 1893, $14,591.00.

"And in further pursuance of the said conspiracy the said Captain Carter, about August, September, October and November, 1894, did advertise for proposals for improving Cumberland sound, in said river and harbor district, and did so manage and conduct the matter of such advertising and the matter of giving out information in regard to the contract to be let, and the matter of receiving proposals and awarding the contract, as to enable the said Anson M. Bangs to

secure the contract for said work and to have the same entered into by the United States with him, November 15, 1894; and in further pursuance of the said conspiracy the said Anson M. Bangs, from about the 15th day of November, 1894, to about the 4th day of May, 1895, did furnish and put into said work certain mattresses, stone, and other material which were different in kind and character from the mattresses, stone and other material contracted for in said contract, and very much less costly to the said Anson M. Bangs, as well as of less value to the United States; which said mattresses, stone, and other material so furnished and put into the work, the said Captain Carter, in further pursuance of the conspiracy, did receive and accept, and cause to be received and accepted for the United States as and for the mattresses, stone, and other material contracted for; and did cause payments to be made out of the moneys of the United States to the said Anson M. Bangs, on account of said furnishing and delivery of the same, and as if the said mattresses, stone and other material had been such as were stipulated for in the contract, and at the same rate, cost and price as if they had been, as follows, and on or about the dates named: December 5, 1894, $874.73; January 11, 1895, $9,845.35; February 1, 1895, $17,800.50; March 2, 1895, $21,287.65; April 5, 1895, $29,659.82, and May 4, 1895, $32,059.92.

"And in further pursuance of the said conspiracy the said
7 Captain Carter, about March and April, 1895, did advertise for proposals for improving Altamaha river, Georgia; Darien harbor, Georgia; Jekyl creek, Georgia, and inside water route between Savannah, Georgia, and Ferdinanda, Florida, in said river and harbor district, and did so manage and conduct the matter of such advertising and the matter of giving out information in regard to the contract to be let and the matter of receiving proposals and awarding the contract as to enable the said William T. Gaynor to secure the contract for said work and to have the same entered into by the United States with him April 20th, 1895, and in further pursuance of said conspiracy the said William T. Gaynor, from about the 20th day of April, 1895, to about the 1st day of July, 1895, did furnish and put into said work certain mattresses, stone, and other material which were different in kind and character from the mattresses, stone, and other material contracted for in said contract, and very much less costly to the said William T. Gaynor, as well as of less value to the United States; which said mattresses, stone, and other material so furnished and put into the work, the said Captain Carter, in further pursuance of the conspiracy, did receive and accept, and cause to be received and accepted for the United States as and for the mattresses, stone and other material contracted for; and did cause payments to be made out of the moneys *to* the United States to the said William T. Gaynor on account of said furnishing and delivery of the same, and as if the said mattresses, stone, and other material had been such as were stipulated for in the contract, and at the same rate, cost, and price as if they had been, as follows, and on or about the dates named: June 4, 1895, $17,728.81, and July 1, 1895, $27,861.32."

Specification II.—"In that Captain Oberlin M. Carter, Corps of En-

gineers, United States Army, devising and intending to defraud the United States and to aid the Atlantic Contracting Company, a corporation, and John F. Gaynor, William T. Gaynor, and Edward H. Gaynor, and Anson M. Bangs, and divers other persons, all of whom were likewise with him, the said Carter, devising and intending to defraud the United States, did, with the corporation and persons named, unlawfully combine and conspire to defraud the United States of divers large sums of money by aiding the said The Atlantic Contracting Company to obtain the allowance and payment of certain false and fraudulent claims hereinafter described; and in

8 pursuance of the said conspiracy the said Oberlin M. Carter, in the months of June, July, and August, September and October, 1896, being an officer of the United States in charge of the river and harbor district usually called the Savannah district, and of the improvement by the United States of rivers and harbors in said district, did, with the knowledge and consent of the said other parties named, so advertise for proposals for contracts for certain works of improvement in the harbor of Savannah, Georgia, in said district, and so manage and conduct said advertising, and the matter of giving out information in regard to the contract to be let, and the matter of receiving proposals and awarding the contract, as to enable the said The Atlantic Contracting Company to secure the contract for said work, and to have the same entered into by the United States with it October 8, 1896; and in further pursuance of the said conspiracy the said The Atlantic Contracting Company afterwards, to wit, from about the 8th day of October, 1896, to July 31, 1897, did furnish and put into said work certain mattresses, stone and other material which were different in kind and character from the mattresses, stone and other material contracted for in said contract, and very much less costly to the said The Atlantic Contracting Company as well as of less value to the United States; which said mattresses, stone, and other material so furnished and put into the work the said Captain Carter, in further pursuance of said conspiracy, did receive and accept, and cause to be received and accepted, for the United States, as and for the mattresses, stone, and other material contracted for; and did, on or about July 6, 1897, cause to be paid, out of the moneys of the United States, $230,749.90 to the said The Atlantic Contracting Company on account of the said furnishing and delivery of the same, and as if the said mattresses, stone and other material had been such as were stipulated for in the contract, and at the same rate, cost and price as if they had been.

And in further pursuance of the said conspiracy the said Captain Carter, about June, July, August, September and October, 1896, did advertise for proposals for a contract for improving Cumberland sound, Georgia, in said river and harbor district, and so manage and conduct the matter of such advertising, and the matter of giving out information in regard to the contract to be let, and the matter of receiving proposals and awarding the contract, as to enable the said The Atlantic Contracting Company to secure the contract for said work and to have the same entered into by the United States with it October 8, 1896; and in further pursuance of the said

conspiracy the said The Atlantic Contracting Company, from
9 about the 8th day of October, 1896, to the 31st day of July, 1897, did furnish and put into said work certain mattresses, stone and other material which were different in kind and character from the mattresses, stone, and other materials contracted for in said contract, and very much less costly to the said The Atlantic Contracting Company, as well as of less value to the United States; which said mattresses, stone, and other material so furnished and put into the work the said Captain Carter, in further pursuance of said conspiracy, did receive and accept, and cause to be received and accepted, for the United States, as and for the mattresses, stone, and other material contracted for; and did, on or about July 6th, 1897, cause to be paid, out of the moneys of the United States, $345,000.00 to the said The Atlantic Contracting Company, on account of said furnishing and delivery of the same, and as if the said mattresses, stone, and other material had been such as were stipulated for in the contract and at the same rate, cost, and price as if they had been.

"This on the 6th day of June, 1896, and thereafter to the 1st day of August, 1897."

Charge II.—"Causing false and fraudulent claims to be made against the United States, in violation of the 60th article of war."

Specification I.—"In that Captain Oberlin M. Carter, Corps of Engineers, United States Army, being at the time the officer in local charge of river and harbor improvements in the Savannah river and harbor districts, did cause to be made certain false and fraudulent claims against the United States and in favor of Edward H. Gaynor, knowing the same to be false and fraudulent, to wit: The claims represented by the following vouchers, submitted by the said Captain Carter with his accounts and marked 'Appropriation for improving Cumberland sound, Georgia and Florida':

Voucher No. 18, for $1,713.23, November, 1892;
Voucher No. 13, for $21,102.67, December, 1892;
Voucher No. 20, for $24,529.95, December, 1892;
Voucher No. 26, for $493.59, January, 1893;
Voucher No. 3, for $20,274.07, February, 1893;
Voucher No. 2, for $16,433.14, March, 1893;
Voucher No. 1, for $14,218.86, April, 1893;
Voucher No. 2, for $27,436.06, May, 1893;
Voucher No. 5, for $9,937.85, May, 1893;
Voucher No. 6, for $26,706.46, May, 1893;

which said false and fraudulent claims the said Captain Carter caused to be made, by knowingly permitting Edward H. Gaynor, who had previously entered into a contract, dated September 16, 1892,
10 to furnish to the United States certain mattresses, stone, and other materials of specified kinds and qualities, for constructing works in said river and harbor district, to furnish and put into said works mattresses, stone, and other material different from, inferior to, cheaper, and of less value to the United States than those contracted for, and by receiving and accepting and paying for the same as of the kinds and qualities contracted for, and by falsely certifying to the correctness of the said vouchers, well knowing that

the mattresses, stone, and other material charged for in said vouchers as having been furnished had not in fact been furnished, each of the said claims having been made in or about the month named in the above description of the voucher relating to it."

Specification II.—"In that Captain Oberlin M. Carter, Corps of Engineers, United States Army, being at the time the officer in local charge of river and harbor improvements in the Savannah river and harbor districts, did cause to be made certain false and fraudulent claims against the United States and in favor of the Atlantic Contracting Company, a corporation, knowing the same to be false and fraudulent, to wit, the claims represented by the following vouchers submitted by the said Captain Carter with his accounts and marked 'Appropriation for improving harbor at Savannah, Georgia':

Voucher No. 11, $3,265.61, November, 1892;
Voucher No. 2, $15,000.00, December, 1892;
Voucher No. 24, $8,507.45, December, 1892;
Voucher No. 28, $20,000.00, December, 1892;
Voucher No. 3, $25,416.81, January, 1893;
Voucher No. 1, $42,722.83, February, 1893;
Voucher No. 3, $15.71, February, 1893;
Voucher No. 2, $44,985.47, March, 1893;
Voucher No. 8, $38,076.11, March, 1893;
Voucher No. 2, $20,584.51, April, 1893;
Voucher No. 4, $30,000.00, May, 1893;
Voucher No. 28, $6,105.69, May, 1893;
Voucher No. 3, $5,968.18, July, 1893;
Voucher No. 4, $34,177.94, July, 1893;
Voucher No. 5, $46,592.39, July, 1893;
Voucher No. 2, $57,013.64, August, 1893;
Voucher No. 1, $97,159.99, September, 1893;
Voucher No. 1, $59,554.84, October, 1893;
Voucher No. 1, $52,452.22, November, 1893;
Voucher No. 2, $85,752.28, December, 1893;
Voucher No. 1, $44,175.02, January, 1894;
Voucher No. 2, $27,057.00, January, 1894;
Voucher No. 4, $75,118.71, February, 1894;
Voucher No. 6, $44,630.22, March, 1894;
11 Voucher No. 7, $202,481.40, July, 1894;
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Voucher No. 7, $88,922.63, October, 1894;
Voucher No. 48, $44,303.92, November, 1894;
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Voucher No. 7, $31,659.28, February, 1895;
Voucher No. 10, $25,612.62, March, 1895;
Voucher No. 30, $63,656.50, April, 1895;
Voucher No. 22, $19,860.08, May, 1895;

which said false and fraudulent claims the said Captain Carter caused to be made by knowingly permitting the said Atlantic Contracting Company, which had previously entered into a contract

dated October 2, 1892, to furnish the United States certain mattresses, stone and other material of specified kinds and qualities for constructing works in said river and harbor district, to furnish and put into said works mattresses, stone, and other material different from, inferior to, cheaper, and of less value to the United States than those contracted for; and by receiving and accepting and paying for the same as of the kinds and qualities contracted for, and by falsely certifying to the correctness of the said vouchers, well knowing that the mattresses, stone, and other material charged for in said vouchers as having been furnished had not in fact been furnished; each of the said claims having been made in or about the month named in above description of the voucher relating to it."

Specification III.—"In that Oberlin M. Carter, Corps of Engineers, United States Army, being at the time the officer in local charge of river and harbor improvements in the Savannah river and harbor district, did cause to be made certain false and fraudulent claims against the United States and in favor of the Atlantic Contracting Company, a corporation, knowing the same to be false and fraudulent, to wit: Claims represented by the following vouchers submitted by the said Captain Carter with his accounts and marked 'Appropriation for improving Jekyl creek, Georgia':

Voucher No. 2, $3,309.40, June, 1893;

Voucher No. 1, $3,595.38, July, 1893;

and by following voucher, submitted by the said Captain Carter with his accounts and marked 'Appropriation for improving waterway between Savannah, Georgia, and Ferdinanda, Florida. Applied to that work at Jekyl creek, Georgia':

Voucher No. 1, $14,591.00, July, 1893;

which said false and fraudulent claims the said Captain
12 Carter caused to be made, by knowingly permitting the said Atlantic Contracting Company, which had previously entered into a contract dated March 1, 1893, to furnish the United States certain mattresses, stone and other material of specified kinds and qualities for constructing works in said river and harbor district, to furnish and put into said works mattresses, stone and other material different from, inferior to, cheaper, and of less value to the United States than those contracted for; and by receiving and accepting and paying for the same as of the kinds and qualities contracted for, and by falsely certifying to the correctness of the said vouchers, well knowing that the mattresses, stone and other material charged for in said vouchers as having been furnished had not in fact been furnished; each of the said claims having been made in or about the month named in the above description of the voucher relating to it."

Specification IV.—"In that Captain Oberlin M. Carter, Corps of Engineers, United States Army, being at the time the officer in local charge of river and harbor improvements in the Savannah river and harbor district, did cause to be made certain false and fraudulent claims against the United States and in favor of Anson M. Bangs, knowing the same to be false and fraudulent, to wit: The claims represented by the following vouchers submitted by the said Captain

Carter with his accounts, and marked 'Appropriation for improving Cumberland sound, Georgia':

Voucher No. 13, $874.73, December, 1894;
Voucher No. 42, $9,845.35, January, 1895;
Voucher No. 8, $17,800.50, February, 1895;

and by the following vouchers submitted by the said Captain Carter with his accounts, and marked 'Appropriation for improving Cumberland sound, Georgia and Florida':

Voucher No. 9, $21,287.65, March, 1895;
Voucher No. 29, $29,659.82, April, 1895;
Voucher No. 23, $32,059.92, May 1895;

which said false and fraudulent claims the said Captain Carter caused to be made by knowingly permitting the said Anson M. Bangs, who had previously entered into a contract, dated November 15, 1894, to furnish the United States certain mattresses, stone and other material, of specified kinds and qualities, for constructing works in said river and harbor district, to furnish and put into said work mattresses, stone and other material, different from, inferior *of*, cheaper, and of less value to the United States than those contracted for; and by receiving and accepting and paying for the same as of the kinds and qualities contracted for, and by falsely certify-
13 ing to the correctness of the said vouchers, well knowing that the mattresses, stone and other material charged for in said vouchers as having been furnished had not in fact been furnished; each of the said claims having been made in or about the month named in the above description of the voucher relating to it."

Specification V.—"In that Captain Oberlin M. Carter, Corps of Engineers, United States Army, being at the time the officer in local charge of river and harbor improvements in the Savannah river and harbor district, did cause to be made certain false and fraudulent claims against the United States and in favor of William T. Gaynor, knowing the same to be false and fraudulent, to wit: The claims represented by the following voucher submitted by the said Captain Carter with his accounts, and marked 'Appropriation for improving harbor at Darien, Georgia':

Voucher No. 16, $17,728.81, June, 1895;

and by the following voucher submitted by the said Captain Carter with his accounts and marked 'Appropriation for improving harbor at Darien, Georgia; improving Altamaha river, Georgia; improving waterway between Savannah, Georgia, and Ferdinanda, Florida; improving Jeckyl creek, Georgia':

Voucher No. 14, $27,861.32, July, 1895;

which said false and fraudulent claims the said Captain Carter caused to be made, by knowingly permitting William T. Gaynor, who had previously entered into a contract, dated April 20, 1895, to furnish the United States certain mattresses, stone and other materials of specified kinds and qualities, for constructing works in said river and harbor district, to furnish and put into said work mattresses, stone and other material, different from, inferior to, cheaper, and of less value to the United States than those contracted for, and by receiving and accepting and paying for the same as of kinds and

qualities contracted for, and by falsely certifying to the correctness of said vouchers, well knowing that the mattresses, stone and other material charged for in said vouchers as having been furnished had not in fact been furnished; each of the said claims having been made in or about the month named in the above description of the voucher relating to it."

Specification VI.—"In that Captain Oberlin M. Carter, Corps of Engineers, United States Army, being at the time the officer in local charge of river and harbor improvements in the Savannah river and harbor district, did cause to be made certain false and fraudulent claims against the United States and in favor of the Atlantic
14 Contracting Company, a corporation, knowing the same to be false and fraudulent, to wit: The claim represented by the following voucher, submitted by the said Captain Carter with his accounts and marked 'Appropriation for improving harbor at Savannah, Georgia':

Voucher No. 8, $230,749.90, July, 1897;

and the claim represented by the following voucher submitted by the said Captain Carter with his accounts and marked 'Appropriation for improving Cumberland sound, Georgia and Florida':

Voucher No. 9, $345,000.00, July, 1897;

which said false and fraudulent claims the said Captain Carter caused to be made by knowingly permitting the said Atlantic Contracting Company, which had previously entered into contracts, dated October 8, 1896, to furnish the United States certain mattresses, stone and other material, of specified kinds and qualities, for constructing works in said river and harbor district, to furnish and put into said works, mattresses, stone and other material different from, inferior to, cheaper and of less value to the United States than those contracted for; and by receiving and accepting and paying for the same as of the kinds and qualities contracted for, and by falsely certifying to the correctness of the said vouchers, well knowing that the mattresses, stone and other material charged for in said vouchers as having been furnished, had not in fact been furnished; each of the said claims having been made in or about the month named in the above description of the voucher relating to it."

Specification VII.—"In that Captain Oberlin M. Carter, Corps of Engineers, United States Army, being the engineer officer in local charge of the works of the river and harbor improvement in the Savannah district, did cause to be prepared a pay-roll, the same being voucher No. 30, to his account with the United States for the month of December, 1896, appropriation for improving the harbor at Savannah, Georgia, upon which voucher the said Carter did cause to be entered the names of certain persons hereinafter named, as laborers, and did cause to be presented to him, the said Captain Carter, for payment, and did cause to be paid to the said persons according to said voucher, knowing the same to be false and fraudulent, for services as laborers during the month of December, 1896, the following amounts, to wit: To William Naylor the sum of one dollar ($1.00); to H. Roberts the sum of four dollars ($4.00); to D. A. Holland the sum of four dollars and fifty cents ($4.50); to

S. G. Vinson the sum of twelve dollars and twenty-five cents
15 ($12.25); to P. H. Cotton the sum of six dollars and fifty cents ($6.50); to J. D. Robinson, Jr., the sum of fifty cents ($0.50); the claims for such services being false and fraudulent in that none of the said persons had rendered services as laborers as set forth in said voucher; and he, the said Carter, well knowing that such claims were false and fraudulent.

"This at Savannah, Georgia, on or about December 21, 1896."

Specification VIII.—"In that Captain Oberlin M. Carter, Corps of Engineers, United States Army, being the engineer officer in local charge of the works of river and harbor improvements of the Savannah district, did cause to be entered on voucher No. 5 of his account with the United States for the month of January, 1897, appropriation for improving harbor at Savannah, Georgia, among other things, an account against the United States for the construction by the Atlantic Contracting Company, during the month of December, 1896, of seventy-six (76) linear feet of piling in repairing the Garden Bank training wall near Savannah, Georgia, at $1.60 per linear foot, amounting to $121.60, and did cause to be presented to him, the said Captain Carter, for payment, and did cause to be paid to the said Atlantic Contracting Company, according to said voucher, a claim against the United States in the sum of one hundred and twenty-one dollars and sixty cents ($121.60), the said claim being false and fraudulent, in that only forty-eight (48) linear feet of the piling charged in said account *was* actually constructed, and the service actually rendered as to the other twenty-eight (28) feet charged for was not the construction of piling in repairing said training wall, but was the driving of seven (7) guide-piles for sinking mattresses, the said guide-piles having been driven by the said Atlantic Contracting Company for itself and its sole use and convenience in sinking said mattresses; and he, the said Captain Carter, well knowing that said claim was false and fraudulent.

"This at Savannah, Georgia, on or about January 12, 1897."

Specification IX.—"In that Captain Oberlin M. Carter, Corps of Engineers, United States Army, being the engineer officer in local charge of the works of river and harbor improvement of the Savannah district, did cause to be entered on voucher No. 27 to his account with the United States for the month of March, 1897, appropriation for improving harbor at Savannah, Georgia, on account against the United States for the construction by the Atlantic
16 Contracting Company during the month of February, 1897, of two hundred and forty (240) linear feet of pile-work in repairing training walls near Savannah, Georgia, at $1.60 per linear foot, amounting to $384, and did cause to be presented to him, the said Captain Carter, for payment, and did cause to be paid to the said Atlantic Contracting Company, according to said voucher, a claim against the United States in the sum of three hundred and eighty-four dollars ($384.00); the said claim being false and fraudulent, in that the service actually rendered was not the construction of two hundred and forty (240) linear feet of pile-work in repairing said training walls, but was the driving of sixty guide-piles for sink-

ing mattresses, the said guide-piles having been driven by said Atlantic Contracting Company for itself and its sole use and convenience in sinking said mattresses, and he, the said Captain Carter, well knowing that said claim was false and fraudulent.

"This at Savannah, Georgia, on or about the tenth day of March, 1897."

Specification X.—"In that Captain Oberlin M. Carter, Corps of Engineers, United States Army, being the engineer officer in local charge of the works of river and harbor improvement of the Savannah district, did cause to be entered on voucher No. 21 to his account with the United States for the month of June, 1897, appropriation for improving harbor at Savannah, Georgia, on account against the United States for the construction by the Atlantic Contracting Company, during the month of May, 1897, of sixty-eight (68) linear feet of pile dams in repairing training walls and spur dams near Savannah, Georgia, at $1.60 per linear foot, amounting to $108.80, and did cause to be presented to him, the said Captain Carter, for payment, and did cause to be paid to the said Atlantic Contracting Company, according to said voucher, a claim against the United States in the sum of one hundred and eight dollars and eighty cents ($108.80); the said claim being false and fraudulent in that the service actually rendered was not the construction of sixty-eight (68) linear feet of pile dams in repairing said training walls and spur dams, but was the driving of seventeen (17) guide-piles for sinking mattresses; the said guide-piles having been driven by said Atlantic Contracting Company for itself and its sole use and convenience in sinking said mattresses; and he, the said Captain Carter, well knowing that said claim was false and fraudulent.

"This at Savannah, Georgia, on or about the nineteenth day of July, 1897.

17 Charge III.—"Conduct unbecoming an officer and a gentleman, in violation of the 61st article of war."

Specification I.—"In that Captain Oberlin M. Carter, Corps of Engineers, United States Army, being the officer in local charge for the United States of river and harbor improvements in the Savannah river and harbor district, did wilfully and knowingly cause the following amounts to be paid, out of the moneys of the United States subject to his order and control as such officer in charge of said improvements, the accounts on which the same were paid being false, the amounts paid not being due or owing from the United States to the parties paid or to any one, and he, the said Captain Carter, well knowing this to be the case; the said accounts, the amounts paid, and the payments being those designated by the following vouchers (and the entries therein and endorsements thereon) submitted by the said Captain Carter with his accounts, and marked 'Appropriation for improving Cumberland sound, Georgia and Florida:'

Voucher No. 18, $1,713.23, November, 1892;
Voucher No. 13, $21,102.67, December, 1892;
Voucher No. 20, $24,529.95, December, 1892,
Voucher No. 26, $493.59, January, 1893;

Voucher No. 3, $20,274.07, February, 1893;
Voucher No. 2, $16,433.14, March, 1893;
Voucher No. 1, $14,218.86, April, 1893;
Voucher No. 2, $27,436.06, May, 1893;
Voucher No. 5, $9,337.85, May, 1893;
Voucher No. 6, $26,706.46, May, 1893;

and those indicated and designated by the following vouchers, and the entries therein and endorsements thereon, submitted by the said Captain Carter with his accounts and marked 'Appropriations for improving harbor at Savannah, Georgia:'

Voucher No. 11, $3,265.61, November, 1892;
Voucher No. 2, $15,000.00, December, 1892;
Voucher No. 24, $8,507.45, December, 1892;
Voucher No. 28, $20,000.00, December, 1892;
Voucher No. 3, $25,416.81, January, 1893;
Voucher No. 1, $42,722.83, February, 1893;
Voucher No. 3, $15.71, February, 1893;
Voucher No. 2, $44,985.47, March, 1893;
Voucher No. 8, $38,076.11, March, 1892;
Voucher No. 2, $20,584.51, April, 1893;
Voucher No. 4, $30,000.00, May, 1893;
Voucher No. 28, $6,105.69, May, 1893;
Voucher No. 3, $5,968.18, July, 1893;
Voucher No. 4, $34,177.94, July, 1893;
Voucher No. 5, $46,592.39, July, 1893;
18 Voucher No. 2, $57,013.64, August, 1893;
Voucher No. 1, $97,159.99, September, 1893;
Voucher No. 1, $59,554.84, October, 1893;
Voucher No. 1, $52,452.22, November, 1893;
Voucher No. 2, $85,752.28, December, 1893;
Voucher No. 1, $44,175.02, January, 1894;
Voucher No. 2, $27,057.00, January, 1894;
Voucher No. 4, $75,118.71, February, 1894;
Voucher No. 6, $44,630.22, March, 1894;
Voucher No. 7, $202,481.40, July, 1894;
Voucher No. 10, $481,933.67, September, 1894;
Voucher No. 7, $88,922.63, October, 1894;
Voucher No. 48, $44,303.92, November, 1894;
Voucher No. 11, $38,903.72, December, 1894;
Voucher No. 41, $39,368.67, January, 1895;
Voucher No. 7, $31,659.28, February, 1895;
Voucher No. 10, $25,612.62, March, 1895;
Voucher No. 30, $63,656.50, April, 1895;
Voucher No. 22, $19,860.08, May, 1895;

and those indicated and designated by the following vouchers (and the entries therein and endorsements thereon), submitted by the said Captain Carter with his accounts and marked 'Appropriation for improving Jekyl creek, Georgia':

Voucher No. 2, $3,309.40, June, 1893;
Voucher No. 1, $3,595.38, July, 1893;

and the one indicated and designated by the following voucher (and

the entries therein and endorsements thereon), submitted by the said Captain Carter with his accounts and marked 'Appropriation for improving waterway between Savannah, Georgia, and Ferdinanda, applied to that work at Jekyl creek, Georgia':

Voucher No. 1, $14,591.00, July, 1893;

and those indicated and designated by the following vouchers (and the entries therein and endorsements thereon), submitted by the said Captain Carter with his accounts and marked 'Appropriation for improving Cumberland sound, Georgia':

Voucher No. 12, $874.73, December, 1894;

Voucher No. 42, $9,845.35, January, 1895;

Voucher No. 8, $17,800.50, February, 1895;

and those indicated and designated by the following vouchers (and the entries therein and endorsements thereon), submitted by the said Captain Carter with his accounts and marked 'Appropriation for improving Cumberland sound, Georgia and Florida':

Voucher No. 9, $21,287.65, March, 1895;

Voucher No. 29, $29,659.82, April, 1895;

Voucher No. 23, $32,059.92, May, 1895;

19 and the one indicated and designated by the following voucher (and the entries therein and endorsements thereon), submitted by the said Captain Carter with his accounts and marked 'Appropriation for improving harbor at Darien, Georgia':

Voucher No. 16, $17,728.81, June, 1895;

and the one indicated and designated by the following voucher (and the entries therein and endorsements thereon), submitted by the said Captain Carter with his accounts and marked 'Appropriation for improving harbor at Darien, Georgia. Improving Altahama river, Georgia. Improving water way between Savannah, Georgia, and Ferdinanda, Florida. Improving Jekyl creek, Georgia':

Voucher No. 14, $27,861.32, July, 1895;

and the said Captain Carter causing each of the said payments to be made in or about the month named in the above description of the voucher relating to it, by drawing and delivering a check as such officer in charge of river and harbor improvements, by which he ordered and directed that the amount indicated be paid out of the moneys of the United States then under his control as such officer."

Specification II.—"In that Captain Oberlin M. Carter, Corps of Engineers, United States Army, being the officer in local charge for the United States of river and harbor improvements in the Savannah river and harbor district, did wilfully and knowingly cause the following amounts to be paid out of the moneys of the United States subject to his order and control as officer in charge of said improvements to the Atlantic Contracting Company, a corporation; the accounts on which the same were paid being false, and the amounts paid not being due or owing from the United States to the said company, or to any one, and he, the said Captain Carter, well knowing this to be the case; the said accounts and amounts paid and the payments being those designated by the following voucher (and the entries therein and endorsements thereon), submitted by

the said Captain Carter with his accounts and marked 'Appropriation for improving harbor at Savannah, Georgia':

Voucher No. 8, $230,749.90, July, 1897;

and the one indicated and designated by the following voucher (and the entries therein and endorsements thereon), submitted by the said Captain Carter with his accounts and marked 'Appropriation for improving Cumberland sound, Georgia and Florida':

Voucher No. 9, $345,000, July, 1897;

each of the said payments having been caused to be made on or about July 6, 1897, by the said Captain Carter drawing and delivering a check as such officer in charge of river and harbor improvements, by which the payment was ordered and directed to be made out of moneys of the United States under his control as such officer."

Specification III.—"In that Captain Oberlin M. Carter, Corps of Engineers, United States Army, being the engineer officer in local charge of the works of river and harbor improvement of the Savannah district, did, at Savannah, Georgia, on or about December 31, 1899, in submitting to the Chief of Engineers, United States Army, a comparative estimate of the cost of improving Savannah harbor, in which estimate there was an item of '360,000 square yards brush mattresses,' make the following statement regarding said item:

"'In the specifications only 200,000 square yards of mattresses are given, but as new soundings show that 300,000 square yards will be required, this estimate has been changed as provided in par. 44 of the specifications.'

"Meaning by the word 'specifications' the specifications to the contract with the Atlantic Contracting Company for improving Savannah harbor, dated October 8, 1896, which statement was false in fact, as no new soundings had been made between June 6, 1896, the date of said specifications, and said date of making said false statement, and which statement was known by him (the said Captain Carter) to be false in fact and was intended to deceive."

Specification IV.—"In that Captain Oberlin M. Carter, Corps of Engineers, United States Army, being the engineer officer in local charge of the works of river and harbor improvement of the United States in the Savannah district, having caused to be prepared a pay-roll, the same being voucher No. 30 to his account with the United States for the month of December, 1896, appropriation for improving harbor at Savannah, Georgia, and having caused to be entered on said voucher the names of certain persons as laborers during the month of December, 1896, and having caused to be paid to said persons divers sums amounting in all to twenty-nine dollars and fifty cents ($29.50), did make and sign the following certificate on said voucher, to wit:

"'I certify that the above pay-roll is correct and just, and the "days" for which payments have been made were days of eight hours each.

O. M. CARTER,
*Capt. Corps of Engineers.*'

which certificate was false and fraudulent in that none of said persons had rendered service as laborers as set forth in said
21 voucher No. 30; and which certificates were known by him, the said Captain Carter, to be false and was intended to deceive.

"This at Savannah, Georgia, on or about December 21, 1896."

Specification V.—"In that Captain Oberlin M. Carter, Corps of Engineers, United States Army, being the engineer officer in local charge of the works of river and harbor improvements of the Savannah district, having caused to be entered on voucher No. 5 to his account with the United States for the month of January, 1897, appropriation for improving Savannah harbor, at Savannah, Georgia, among other things, an account against the United States, for the construction by the Atlantic Contracting Company, during the month of December, 1896, of seventy six (76) linear feet of piling in repairing the Garden Bank training wall, near Savannah, Georgia, at $1.60 per linear foot, amounting to $121.60, did make and sign the following certificate on said voucher, to wit:

"'I certify that the above account is correct and just; the articles have been expended and applied to the purpose for which purchased. The mode of expenditure adopted was the most economical and advantageous to the Government.

O. M. CARTER,
*Capt. Corps of Engineers.*'

which certificate was false in fact in that only forty-eight linear feet of the piling charged in said account *was* actually constructed, and the service actually rendered as to the other twenty-eight (28) feet charged for was not the construction of piling in repairing said training wall, but was the driving of seven (7) guide-piles for sinking mattresses; the said guide-piles having been driven by said Atlantic Contracting Company for itself and its sole use and convenience in sinking said mattresses; and which said certificate was well known by the said Carter to be false in fact, and was intended to deceive.

"This at Savannah, Georgia, on or about January 12, 1897."

Specification VI.—"In that Captain Oberlin M. Carter, Corps of Engineers, United States Army, being the engineer officer in local charge of the works of river and harbor improvement of the Savannah district, having caused to be entered on voucher No. 27 to his account with the United States for the month of March, 1897, appropriation for improving the harbor of Savannah, Georgia, an account against the United States for the construction, by the Atlantic Contracting Company, during the month of February, 1897, of two hundred and forty (240) linear feet of pile-work in repairing training walls near Savannah, Georgia, at $1.60 per linear foot,
22 amounting to $384, did make — sign the following certificate on said voucher, to wit:

"'I certify that the above account is correct and just; the articles have been expended and applied to the purpose for which purchased.

The mode of expenditure adopted was most economical and advantageous to the Government.

O. M. CARTER,
*Capt. Corps of Engineers.*'

which said certificate was false in fact, in that the service actually rendered was not the construction of two hundred and forty (240) linear feet of pile-work in repairing said training walls, but was the driving of sixty (60) guide-piles for sinking mattresses; the said guide-piles having been driven by the said Atlantic Contracting Company for itself and its sole use and convenience in sinking said mattresses; and which said certificate was well known by the said Carter to be false in fact, and was intended to deceive.

"This at Savannah, Georgia, on or about the tenth day of March, 1897."

Specification VII.—"In that Captain Oberlin M. Carter, Corps of Engineers, United States Army, being the engineer officer in local charge of the works of river and harbor improvement of the Savannah district, having caused to be entered in voucher No. 21 to his account with the United States for the month of June, 1897, appropriation for improving harbor at Savannah, Georgia, an account against the United States for the construction by the Atlantic Contracting Company during the month of May, 1897, of sixty-eight (68) linear feet of pile dams in repairing training wall and spur dams near Savannah, Georgia, at $1.60 per linear foot, amounting to $108.80, did make and sign the following certificate on said voucher, to wit:

"'I certify that the above account is correct and just. The mode of expenditure adopted was the most economical and advantageous to the Government.

O. M. CARTER,
*Capt. Corps of Engineers.*'

which certificate was false in fact, in that the service actually rendered was not the construction of sixty-eight (68) linear feet of pile dams in repairing said training walls and spur dams, but was the driving of seventeen (17) guide-piles for sinking mattresses; the said guide-piles having been driven by said Atlantic Contracting Company for itself and its sole use and convenience in sinking said mattresses; and which said certificate was well known by the said Carter to be false in fact and was intended to deceive.

23 "This at Savannah, Georgia, on or about the nineteenth day of June, 1897."

Specification VIII.—"In that Captain Oberlin M. Carter, Corps of Engineers, United States Army, devising and intending to defraud the city of Savannah, Georgia, and to aid the Atlantic Contracting Company, a corporation, and John F. Gaynor, William T. Gaynor, Edward H. Gaynor, Anson M. Bangs, and divers other persons, all of whom were likewise with him, the said Captain Carter, devising and intending to defraud the said city, did, on or about February 20, 1896, and thereafter to June 30, 1896, with the said company and

the persons named, unlawfully combine and conspire to defraud the said city of divers large sums of money, and to wrongfully compel it, the said city, to dispose of certain valuable rock owned by it, under unfavorable circumstances to it, in order that the said Atlantic Contracting Company might be enabled to purchase the same from the city at a price far below the real cost and value of the same; and in pursuance of the said conspiracy, the said Captain Carter, during the months of February, March, April, May and June, 1896, being the officer of the United States in charge of the river and harbor district, usually called the Savannah district and of the improvements by the United States of rivers and harbors in said district in which the said rock was situated (in a body of navigable water, and outside of the harbor lines of the same, by and under the revocable permission of the Secretary of War), did use his said position as officer in charge of said district and improvements, and the powers and influence of the same, to have the Secretary of War revoke the said permission and require the said city to remove its said rock from the position occupied by it in the harbor; the means used by him to accomplish this being, among other things, false and misleading statements in letters to his superior officers, and in endorsements on letters referred to him from the War Department, as to the necessity for prompt and speedy removal of the said rock from the position occupied by it in the harbor; and also like statements and other representations made by him to various officials of the said city, and others, orally and in writing."

Specification IX.—"In that Oberlin M. Carter, Corps of Engineers, United States Army, being the officer in charge of the Savannah river and harbor district, and having been required by the Chief of Engineers, United States Army, by the endorsement on the letter of one Paulding, to furnish information in regard to the proposed acquisition by the United States of certain lands on Hutchin-
24 son's island, near Savannah, Georgia, for river and harbor improvement purposes, did, in an endorsement of said letter, dated October 21, 1896, state as follows, to wit:

"'When operations were to begin, excessive rentals were demanded by property-owners, some of whom had taken possession of wharves as a speculation with a view to obtaining excessive damages. The work would have been delayed and its cost increased by about $50,000, and it was therefore abandoned;' which said statement was false, and was known to him, the said Captain Carter, to be false, and was intended by him to deceive Brigadier General William P. Craighill, Chief of Engineers, United States Army.

"This at Savannah, Georgia, on or about October 21, 1896."

Specification X.—"In that Captain Oberlin M. Carter, Corps of Engineers, United States Army, being duly sworn as a witness for the defendant in the case of James B. Brown *v.* The Atlantic Contracting Company, then pending in the city court of Savannah, Georgia, in which the subject-matter of the litigation was certain rock said to have been delivered by the said Brown to the said company, and then by the company to the United States, to go into certain river and harbor improvements carried on under the said Captain Carter

as officer in charge for the United States, did testify on oath in regard to said rock to the effect that the United States did not receive and pay for it, but that they merely allowed the company to dump the same into the works along with the rock received and paid for, the said company not being paid for it; which said testimony was false, in that the United States had received and paid said company for it, and was well known by the said Captain Carter to be false, and was intended by him to deceive the said court and its jury empaneled to try the said case.

"This at Savannah, Georgia, on or about March 15, 1897."

Specification XI.—"In that Captain Oberlin M. Carter, Corps of Engineers, United States Army, being the engineer officer in local charge of the works of river and harbor improvements of the United States in the Savannah district, and having received from one Alfred Hirt, for the United States, on or about December, 1896, the sum of one hundred and thirty-two dollars and ten cents ($132.10) on account of delay of said Hirt in returning, and expense of returning, a diving outfit belonging to the United States and pertaining to the United States snag-boat Satilla, did fail to account, and has failed to account, to the United States for the said sum, or any part thereof, from the time of receiving said sum to the present time, viz., December 10, 1897."

Specification XII.—"In that Captain Oberlin M. Carter, Corps of Engineers, United States Army, being in the city of New York, on or about the 25th day of May, 1897, did, while there, cause a telegram to be sent to the Secretary of War, purporting to come from him in Savannah, Georgia, whereby he intended to deceive the Secretary of War as to where he, the said Captain Carter, was on that date.

"This was at New York, on or about May 25, 1897."

Specification XIII.—"In that Captain Oberlin M. Carter, Corps of Engineers, United States Army, having left Savannah, Georgia, on or about the 2d day of August, 1894, and having gone to the State of Montana, did on the 16th day of August, 1894, cause a letter to be forwarded to the Chief of Engineers, United States Army, dated Savannah, Georgia, reporting his, this said Captain Carter's, departure from Savannah on that day, whereby he intended to deceive Brigadier General Thomas L. Casey, Chief of Engineers, United States Army.

"This in Montana, on or about August 16th, 1894."

Specification XIV.—"In that Captain Oberlin M. Carter, Corps of Engineers, United States Army, in a personal report of himself as such officer, made to the Chief of Engineers, United States Army, for the month of April, 1894, did report himself present at his station from the 3rd to the 7th day of April, 1894, both inclusive, which said report was false, in that he was absent from his station during said time (part of it in New York); and which report was well known to him to be false, and was intended to deceive.

"This on or about April 30th, 1894."

Specification XV.—"In that Captain Oberlin M. Carter, Corps of Engineers, United States Army, in a personal report of himself as

such officer, made to the Chief of Engineers, United States Army, for the month of August, 1894, did report himself present at his station from the 3rd to the 15th day of August, 1894, both inclusive, which said report was false, in that he was absent from his station during said time (part of it in New York, St. Paul, and Yellowstone national park); and which report was well known to him to be false, and was intended to deceive.

"This on or about August 31st, 1894."

Specification XVI.—"In that Captain Oberlin M. Carter, Corps of Engineers, United States Army, in a personal report of himself as such officer, made to the Chief of Engineers, United States
26 Army, for the month of September, 1894, did report himself present at his station from the 23rd to the 27th day of September, 1894, both inclusive, which said report was false, in that he was absent from his station during said time (part of it in Cincinnati, Ohio); and which report was well known to him to be false and was intended to deceive.

"This on or about September 30, 1894."

Specification XVII.—"In that Captain Oberlin M. Carter, Corps of Engineers, United States Army, in a personal report of himself as such officer made to the Chief of Engineers, United States Army, for the month of October, 1894, did report himself as present at his station on the 4th and 5th days of October, 1894, which said report was false, in that he was absent from his station during said days, and which report was well known to him to be false, and was intended to deceive.

"This on or about October 31, 1894."

Specification XVIII.—"In that Captain Oberlin M. Carter, Corps of Engineers, United States Army, in a personal report of himself as such officer, made to the Chief of Engineers, United States Army, for the month of November, 1894, did report himself present at his station on the 11th and 12th days of November, 1894, which said report was false, in that he was absent from his station during said time (part of it in New York); and which report was well known to him to be false, and was intended to deceive.

"This on or about November 30, 1894."

Specification XIX.—"In that Captain Oberlin M. Carter, Corps of Engineers, United States Army, in a personal report of himself as such officer, made to the Chief of Engineers, United States Army, for the month of December, 1894, did report himself present at his station from the 8th to the 12th day of December, 1894, both inclusive, and from the 24th to the 31st day of December, 1894, both inclusive, which said report was false, in that he was absent from his station during said times (parts of them in New York); and which report was well known to him to be false and was intended to deceive.

"This on or about December 31, 1894."

Specification XX.—"In that Captain Oberlin M. Carter, Corps of Engineers, United States Army, in a personal report of himself as such officer, made to the Chief of Engineers, United States Army, for the month of January, 1895, did report himself present at his

station from the 1st to the 9th day of January, 1895, both inclusive,
which said report was false, in that he was absent from his
27 station during said time (part of it in New York), and which
report was well known to him to be false and was intended to deceive.

"This on or about January 31, 1895."

Specification XXI.—"In that Captain Oberlin M. Carter, Corps of Engineers, United States Army, in a personal report of himself as such officer, made to the Chief of Engineers, United States Army, for the month of July, 1895, did report himself present at his station from the 3d to the 9th day of July, 1895, both inclusive, which said report was false, in that he was absent from his station during said time (part of it in New York), and which report was well known to him to be false and intended to deceive.

"This on or about July 31, 1895."

Specification XXII.—"In that Oberlin M. Carter, Corps of Engineers, United States Army, in a personal report of himself as such officer, made to the Chief of Engineers, United States Army, for the month of March, 1897, did report himself present at his station from the 2d to the 9th day of March, 1897, both inclusive, which said report was false, in that he was absent from his station during said time (part of it in New York); and which report was well known to him to be false, and was intended to deceive.

"This at Savannah, Georgia, on or about the 31st day of March, 1897."

Specification XXIII.—"In that Captain Oberlin M. Carter, Corps of Engineers, United States Army, in a personal report of himself as such officer, made to the Chief of Engineers, United States Army, for the month of May, 1897, did report himself present at his station on the 24th day of May, 1897, which said report was false, in that he was absent from his station on said day (and was in New York), and which report was well known to him to be false, and was intended to deceive.

"This at Savannah, Georgia, on or about May 31, 1897."

Charge IV.—"Embezzlement, as defined in section 5488, Revised Statutes of the United States, in violation of the 62d article of war."

Specification I.—"In that Captain Oberlin M. Carter, Corps of Engineers, United States Army, being the officer in charge for the United States of river and harbor improvements in the Savannah river and harbor district, and, as such officer, in charge of said improvements, being a disbursing officer of the United States, and having entrusted to him large amounts of public money of the United States, did wilfully and knowingly apply for a purpose not authorized by law large sums of the said moneys so entrusted to
28 him, by wilfully and knowingly causing the amounts hereinafter named to be paid out of the said moneys which were subject to his order and control of such officer in charge of said improvements; the accounts on which the same were being paid being false, the amounts paid not being due or owing from the United States to the parties paid, or to any one, and he, the said Captain Carter, well knowing this to be the case; the said accounts, the

amounts paid, and the payments being those designated by the following voucher (and the entries therein and the endorsements thereon), submitted by the said Captain Carter with his accounts and marked 'Appropriation for improving harbor at Savannah, Georgia':

Voucher No. 8 ($230,749.90), July, 1897;

and the one indicated and designated by the following voucher (and the entries therein and endorsements thereon), submitted by the said Captain Carter with his accounts and marked 'Appropriation for improving Cumberland sound, Georgia and Florida':

Voucher No. 9 ($345,000,*000*), July, 1897;

each of the said payments having been caused to be made on or about July 6, 1897, by the said Captain Carter drawing and delivering a check as such officer in charge of river and harbor improvements, by which the payment was ordered and directed to be made out of moneys of the United States under his control as such officer."

Specification II.—"In that Captain Oberlin M. Carter, Corps of Engineers, United States Army, being the officer in charge for the United States of river and harbor improvements in the Savannah river and harbor district, and as such officer in charge of said improvements, being a disbursing officer of the United States, and having entrusted to him large amounts of public money of the United States, did wilfully and knowingly apply, for a purpose not authorized by law, large sums of the said moneys so entrusted to him, by wilfully and knowingly causing the following amounts to be paid out of the said moneys which were subject to his order and control as such officer in charge of said improvements; the accounts on which the same were paid being false, the amounts paid not being due or owing from the United States to the parties paid, or to any one, and he, the said Captain Carter, well knowing this to be the case; the said accounts, the amounts paid, and the payments being those designated by the following vouchers (and the entries therein and endorsements thereon), submitted by the said Captain Carter with his accounts and marked 'Appropriation for improving Cumberland sound, Georgia and Florida':

Voucher No. 18, for $1,713.23, November, 1892;

Voucher No. 13, for $21,102.67, December, 1892;

29 Voucher No. 20, for $24,529.95, December, 1882;

Voucher No. 26, for $493.59, January, 1893;

Voucher No. 3, for $20,274.07, February, 1893;

Voucher No. 2, for $16,433.14, March, 1893;

Voucher No. 1, for $14,218.86, April, 1893;

Voucher No. 2, for $27,436.06, May, 1893;

Voucher No. 5, for $9,337.85, May, 1893;

Voucher No. 6, for $26,706.46, May, 1893;

and those indicated and designated by the following vouchers (and the entries therein and endorsements thereon) submitted by the said Captain Carter with his accounts, and marked 'Appropriation for improving harbor at Savannah, Georgia':

Voucher No. 11, $3,265.61, November, 1892;

Voucher No. 2, $15,000, December, 1892;
Voucher No. 24, $8,507.45, December, 1892;
Voucher No. 28, $20,000, December, 1892;
Voucher No. 3, $25,416.81, January, 1893;
Voucher No. 1, $42,722.83, February, 1893;
Voucher No. 3, $15.71, February, 1893;
Voucher No. 2, $44,985.47, March, 1893;
Voucher No. 8, $38,076.11, March, 1893;
Voucher No. 2, $20,584.51, April, 1893;
Voucher No. 4, $30,000, May, 1893;
Voucher No. 28, $6,105.69, May, 1893;
Voucher No. 3, $5,968.18, July, 1893;
Voucher No. 4, $34,177.94, July, 1893;
Voucher No. 5, $46,592.39, July, 1893;
Voucher No. 2, $57,013.64, August, 1893;
Voucher No. 1, $97,159.99, September, 1893;
Voucher No. 1, $59,554.84, October, 1893;
Voucher No. 1, $52,452.22, November, 1893;
Voucher No. 2, $85,752.28, December, 1893;
Voucher No. 1, $44,175.02, January, 1894;
Voucher No. 2, $27,057.00, January, 1894;
Voucher No. 4, $75,118.71, February, 1894;
Voucher No. 6, $44,630.22, March, 1894;
Voucher No. 7, $202,481.40, July, 1895;
Voucher No. 10, $481,933.67, September, 1894;
Voucher No. 7, $88,922.63, October, 1894;
Voucher No. 48, $44,303.91, November, 1894;
Voucher No. 11, $38,903.72, December, 1894;
Voucher No. 41, $39,368.67, January, 1895;
Voucher No. 7, $31,659.28, February, 1895;
Voucher No. 10, $25,612.62, March, 1895;
Voucher No. 30, $63,656.50, April, 1895;
Voucher No. 22, $19,860.08, May, 1895;

and those indicated and designated by the following vouchers (and the entries therein and endorsements thereon) submitted by
30 the said Captain Carter with his accounts and marked 'Appropriation for improving Jekyl creek, Georgia':

Voucher No. 2, $3,309.40, June, 1893;
Voucher No. 1, $3,595.38, June, 1893;

and the one indicated and designated by the following voucher (and the entries therein and endorsements thereon) submitted by the said Captain Carter with his accounts and marked 'Appropriation for improving waterway between Savannah, Georgia, and Ferdinanda, Florida, applied to that work at Jekyl creek, Georgia':

Voucher No. 1, $14,591.00, July, 1893;

and those indicated and designated by the following vouchers (and the entries therein and endorsements thereon) submitted by the said Captain Carter with his accounts and marked 'Appropriation for improving Cumberland sound, Georgia':

Voucher No. 13, $874.73, December, 1894;
Voucher No. 42, $9,854.35, January, 1895;
Voucher No. 8, $17,800.50, February, 1895;

and those indicated and designated by the following vouchers (and the entries therein and endorsements thereon) submitted by the said Captain Carter with his accounts and marked 'Appropriation for improving Cumberland sound, Georgia and Florida':

Voucher No. 9, $21,287.65, March, 1895;

Voucher No. 29, $29,659.82, April, 1895;

Voucher No. 23, $32,059.92, May, 1895;

and the one indicated and designated by the following voucher (and the entries therein and endorsements thereon) submitted by the said Captain Carter with his accounts and marked 'Appropriation for improving harbor at Darien, Georgia':

Voucher No. 16, $17,728.81, June, 1895;

and the one indicated and designated by the following voucher (and the entries therein and endorsements thereon) submitted by the said Captain Carter with his accounts and marked 'Appropriation for improving harbor at Darien, Georgia. Improving Altahama river, Georgia. Improving waterway between Savannah, Georgia, and Ferdinanda, Florida. Improving Jekyl creek, Georgia':

Voucher No. 14, $27,861.32, July, 1895;

the said Captain Carter causing each of the said payments to be made in or about the month named in the above description of the voucher relating to it by drawing and delivering a check as such officer in charge of river and harbor improvements, by which he ordered and directed that the amount indicated be paid out of the moneys of the United States then under his control as such officer."

To which charges and specifications the accused, Captain Oberlin M. Carter, Corps of Engineers, pleaded as follows:

31 Charge I.

To the first specification, in bar of trial, the statute of limitation (103d article of war), which plea was sustained by the court.

To the 2d specification, "Not guilty."

To the charge, "Not guilty."

Charge II.

To the 1st, 2d, 3d, 4th, and 5th specifications, in bar of trial, the statute of limitation (103d article of war); which plea was sustained by the court.

To the 6th specification, "Not guilty."

To the 7th specification, "Not guilty."

To the 8th specification, "Not guilty."

To the 9th specification, "Not guilty."

To the 10th specification, "Not guilty."

To the charge, "Not guilty."

Charge III.

To the 1st specification, in bar of trial, the statute of limitation (103d article of war); which plea was sustained by the court.

To the 2d specification, "Not guilty."

To the 3d specification, "Not guilty."

To the 4th specification, "Not guilty."

To the 5th specification, "Not guilty."
To the 6th specification, "Not guilty."
To the 7th specification, "Not guilty."
To the 8th specification, "Not guilty."
To the 9th specification, "Not guilty."
To the 10th specification, "Not guilty."
To the 11th specification, "Not guilty."
To the 12th specification, "Not guilty."
To the 13th, 14th, 15th, 16th, 17th, 18th, 19th, 20th, and 21st specifications, in bar of trial, the statute of limitation (103d article of war); which plea was sustained by the court.
To the 22d specification, "Not guilty."
To the 23d specification, "Not guilty."
To the charge, "Not guilty."

Charge IV.

To the 1st specification, "Not guilty."
To the 2d specification, in bar of trial, the statute of limitation (103d article of war); which plea was sustained by the court.
To the charge, "Not guilty."

32 *Finding.*

And the court, after due deliberation, finds the accused, Captain Oberlin M. Carter, Corps of Engineers, as follows:

Charge I.

Of the 2d specification, "Guilty, except the words 'and other material' and interpolating the word 'and' between the words 'mattresses' and 'stone' wherever those words occur in the specification, of the excepted words not guilty and of the interpolated words guilty."
Of the charge, "Guilty."

Charge II.

Of the 6th specification, "Guilty, except of the words 'and other material' where they occur the second and third time and interpolating the word 'and' between the words 'mattresses' and 'stone' where they occur the second and third time; of the excepted words not guilty; of the interpolated word guilty."
Of the 7th specification, "Guilty."
Of the 8th specification, "Guilty."
Of the 9th specification, "Guilty."
Of the 10th specification, "Guilty."
Of the charge, "Guilty."

Charge III.

Of the 2d specification, "Guilty."
Of the 3d specification, "Guilty."
Of the 4th specification, "Guilty."

Of the 5th specification, "Guilty, except of the words 'the articles have been' and of the excepted words not guilty."
Of the 6th specification, "Guilty."
Of the 7th specification, "Guilty."
Of the 8th specification, "Not guilty."
Of the 9th specification, "Guilty."
Of the 10th specification, "Not guilty."
Of the 11th specification, "Guilty."
Of the 12th specification, "Not guilty."
Of the 22d specification, "Guilty."
Of the 23d specification, "Not guilty."
Of the charge, "Guilty."

Charge IV.

Of the 1st specification, "Guilty."
Of the charge, "Guilty."

33 *Sentence.*

And the court does therefore sentence the accused, Captain Oberlin M. Carter, Corps of Engineers, United States Army, "to be dismissed from the service of the United States, to suffer a fine of five thousand dollars, to be confined at hard labor at such place as the proper authority may direct for five years, and the crime, punishment, name and place of abode of the accused to be published in the newspapers in and about the station and in the State from which the accused came, or where he usually resides."

The record of the proceedings of the general court-martial in the foregoing case of Captain Oberlin M. Carter, Corps of Engineers, having been submitted to the President, the following are his orders thereon:

The findings of the court-martial in the matter of the foregoing proceedings against Captain Oberlin M. Carter, Corps of Engineers, U. S. Army, are hereby approved as to all except the following:

Charge 2. Specifications seven, eight, nine, and ten.

Charge 3. Specifications three, four, five, six, seven, nine, eleven, and twenty-two, which are disapproved. And the sentence imposed by the court-martial upon the defendant, Oberlin M. Carter, is hereby approved.

ELIHU ROOT,
*Secretary of War.*

EXECUTIVE MANSION,
WASHINGTON, D. C., *September* 29, 1899.

Approved and confirmed.

WILLIAM McKINLEY.

By direction of the Secretary of War, Captain Oberlin M. Carter, Corps of Engineers, ceases to be an officer of the army from this date, and the United States penitentiary, Fort Leavenworth, Kansas, is designated as the place for his confinement, where he will be sent

by the commanding general, Department of the East, under proper guard.

By command of Major General Miles:

H. C. CORBIN,
*Adjutant General.*

(Official copy.)
H. C. CORBIN,
*Adjutant General.*

Your petitioner further avers that said Carter, in pursuance of said sentence, has been dismissed from the Army of the
34 United States, and the order of dismissal, as your petitioner is informed and believes, has been duly personally served upon him; that the crime, punishment, name and place of abode of said Carter has been published in the newspapers in and about his station, and in and about the State whence said Carter came and where he usually abode, as your petitioner is informed and believes; and that said Carter has paid unto the United States the fine of five thousand dollars ($5,000) imposed by said sentence, as your petitioner is informed and believes.

Your petitioner further avers that the said Carter having been cashiered the army, having suffered degradation, and having paid the fine imposed, as above set forth, his imprisonment and detention are contrary to law, are in violation of the Constitution of the United States and are illegal and without any warrant of law, for the following reasons, that is to say:

First. Your petitioner avers that there was no evidence delivered before said court-martial which tended to show that any crime whatever had been committed, or which tended to show that any crime had been committed by the said Carter; but, on the contrary, all of said evidence, taken together, affirmatively showed that there was no *corpus delicti*, and that said Carter was wholly innocent of any wrong-doing, and that in imposing the sentence above set out said court-martial acted beyond its jurisdiction, and said sentence was and is wholly void. Your petitioner has no copy of said evidence, and he is informed and believes that the only complete copy thereof is in the hands of the Attorney General of the United States, but he attaches hereto, makes part hereof, and marks the same Exhibit A, an abstract of all the evidence adduced before said court-martial.

Second. Your petitioner avers that the finding of said Carter guilty by said court-martial of charge IV, and the specification thereunder, and the imposing of sentence on him as for a violation of the 62d article of war, mentioned in said charge, were and each of them was wholly illegal and void, for that:

(*a.*) It was shown by the evidence before said court-martial, and it appears from an examination of the charges and specifications alleged against said Carter, that the two sums of money alleged in said specification to said charge IV to have been paid out by said Carter "for a purpose not authorized by law" were paid out by said Carter under and in accordance with the specifications of two certain contracts between the United States of America and the Atlantic

Contracting Company, dated September 8, A. D. 1896, for the improvement of Savannah harbor and Cumberland sound, re-
35 spectively, which said contracts were entered into pursuant to the act of Congress approved June 3, 1896.

(*b.*) It appears from an inspection of the specification under said charge IV that the acts described in said specification were not in violation of article 62, section 1342, Revised Statutes of the United States (the 62nd article of war), and were not cognizable by a court-martial under said article, but if justiciable at all by said court-martial, were justiciable under article 60 of said section 1342 (the 60th article of war).

Third. Your petitioner further avers that said imprisonment and detention are illegal and contrary to article 102 of section 1342, Revised Statutes of the United States, which prohibits a second trial for the same offense, and contrary to the fifth amendment of the Constitution of the United States, in this:

(*a.*) That it appears from the charges and specifications upon which said Carter was tried by said court-martial, and it also appears from the evidence delivered before said court-martial that the payment of the two checks drawn by said Carter and described in each of the specifications under which he was convicted are the only basis of each of said four charges, and that the single act of drawing said two checks has been carved up into four distinct and different crimes, and a punishment assessed on each.

(*b.*) That the sentence of said court-martial was beyond its powers and void, for that under said 60th article of war said court-martial was authorized to inflict the punishment of a fine or an imprisonment or such other punishment as it might adjudge.

(*c.*) That under the 61st article of war (art. 61, R. S. U. S., § 1342), the violation of which was laid in said charge III, said court-martial had jurisdiction to inflict the punishment of dismissal from the army only.

(*d.*) That the facts set out in the specifications under charges I, II and IV, respectively, bring the offense therein described under the said 60th article of war, under which the said court-martial had jurisdiction only to inflict a fine or an imprisonment or some other punishment, in the alternative, and not cumulatively.

Fourth. Your petitioner further alleges that the punishment of fine and imprisonment were and each of them was beyond the power of said court-martial to inflict, because the same were imposed upon said Carter after he had ceased to be an officer of the Army of the United States, and after he had ceased to be subject to the jurisdiction of a court-martial.

Fifth. Your petitioner further avers that said punishment
36 of imprisonment was beyond the powers of said court-martial, and void in this—that under and by virtue of an act of Congress approved September 27, 1890, the President of the United States, by an order dated March 20, 1895, fixed the maximum punishment for a violation by an enlisted man in the Army of the United States of the 60th article of war, and for a violation by such person of the 62nd article of war, by embezzlement of more

than one hundred dollars, at a term of four years' confinement at hard labor, under each article; and thereafter, on October 31, 1895, the President of the United States, in accordance with the terms of said act of Congress, prescribed that said maximum limits should extend to all such violations whether by officers or enlisted men of the army. Said last-named order is to be found in army regulations promulgated by the order of the President on October 31, 1895, as follows: "Art. 938. Whenever, by any of the articles of war, punishment is left to the discretion of the court, it shall not, in time of peace, be in excess of a limit which the President may prescribe. The limits so prescribed are set forth in the Manual for Courts-martial, published by authority of the Secretary of War."

Petitioner avers that said limits are prescribed in said manual as hereinabove set out, and that said order of October 31, 1895, was in full force and effect when said court-martial passed its sentence of five years' imprisonment upon said Carter.

Sixth. Your petitioner further avers that said sentence is wholly void in this that said court-martial found the said Captain Carter guilty of charge one and of specification two thereunder; of charge two and specifications six, seven, eight, nine and ten thereunder; of charge three and specifications two, three, four, five, six, seven, nine, eleven and twenty-two thereunder; and of charge four and specification one thereunder; and thereupon sentenced the said Carter to be punished as hereinabove set forth; but the President of the United States disapproved the findings of said court-martial as to specifications seven, eight, nine and ten, under charge two, and specifications three, four, five, six, seven, nine, eleven and twenty-two under charge three, and approved the said sentence as originally fixed by the said court; the said several specifications so approved and the said several specifications so disapproved, charging several and distinct offenses, growing out of several, distinct and disconnected transactions, said several offenses charged not being of the same class of crimes.

That the sentence thus confirmed by the said President of the United States was not the sentence of said court-martial, and was not in mitigation or commutation of such sentence, but was, for the offenses of which said Carter was finally determined to be guilty, in excess of the sentence imposed by said court-martial.

Your petitioner further avers that heretofore, to wit, on October 2, A. D. 1899, said Oberlin M. Carter, through Abram J. Rose, applied to the United States circuit court for the southern district of New York for a writ of *habeas corpus*, which said writ was, on, to wit, October 20, 1899, by said court, dismissed.

That thereafter, on, to wit, January 24, 1900, the decision of said circuit court was affirmed by the United States circuit court of appeals for the second circuit.

That thereafter the petitioner last named prosecuted error to said circuit court and certiorari out of the Supreme Court of the United States, but said Supreme Court did, on, to wit, April 23, 1900, dismiss the appeal and writ of error.

Copies of the opinions in each of said courts are hereto attached, made part hereof and marked respectively Exhibits B, C and D.

Your petitioner further avers that this application is made upon the same evidence as in the application to the said circuit court for the southern district of New York, to wit, the evidence adduced before said court-martial.

37 Wherefore your petitioner prays that the writ of *habeas corpus* issue out of this court, directed to the said Robert W. McClaughry, warden as aforesaid, commanding him to have the body of the said Oberlin M. Carter before this honorable court, as shall be directed in said writ, to do and receive what shall be considered by the court meet and proper, and that he may be restored to his liberty.

I. STANTON CARTER.

UNITED STATES OF AMERICA, }
*Northern District of Illinois, Northern Division,* } ss:

I. Stanton Carter, being duly sworn, upon his oath deposes and says that he is the petitioner in the foregoing application subscribed by him; that he has read the same and knows the contents thereof; and that the same is true of his own knowledge, save and except as to those statements alleged to be upon information and belief, and as to those matters he believes it to be true.

I. STANTON CARTER.

FRANK P. BLAIR,
[SEAL.] *Att'y for Petitioner.*

Subscribed and sworn to before me this 22nd day of June, A. D. 1900.

S. W. BURNHAM,
*Clerk U. S. Cir. Court, Nor. Dist. of Ill.*

Endorsed: No. 7849. Oberlin M. Carter, on the petition of I. Stanton Carter, petitioner, *vs.* Robert W. McClaughry. Application for a writ of *habeas corpus.* Filed Oct. 17, 1900. Geo. F. Sharitt, clerk.

38 & 39 In the Circuit Court of the United States for the District of Kansas, First Division.

OBERLIN M. CARTER, on the Petition of I. STANTON CARTER, Petitioner,
*vs.*
ROBERT W. MCLAUGHRY.

Now, on this 17th day of October, A. D. 1900, there being presented to this court in open session a duly verified application of the said I. Stanton Carter for the allowance of a writ of *habeas corpus,* upon reading and considering said application—

It is ordered by the court that a writ of *habeas corpus* issue to be served upon Robert W. McLaughry, warden of the United States

penitentiary at Fort Leavenworth, Kansas, the same being also called the United States prison at Fort Leavenworth, Kansas, and that said writ be made returnable before this court on the 26th day of October, A. D. 1900, at 10 o'clock a. m. of that day.

WILLIAM C. HOOK, *Judge.*

Endorsed: No. 7849. *In re* Oberlin M. Carter, petitioner. Order for a writ of *habeas corpus.* Filed Oct. 17, 1900. Geo. F. Sharitt, clerk.

40 In the Circuit Court of the United States, Eighth Judicial Circuit.

OBERLIN M. CARTER, on the Petition of I. Stanton Carter, Petitioner, *vs.* ROBERT W. MCCLAUGHREY. } Petition for Writ of *Habeas Corpus.*

Comes now the above petitioner and, leave of court thereto first having been had, files this his amendment to the petition heretofore filed in this cause.

On the last page of said petition and next preceding the prayer thereof the following allegation:

And your petitioner further avers that on, to wit, December 9, 1899, said Oberlin M. Carter, together with Benjamin D. Greene, John F. Gaynor, William T. Gaynor, Edward H. Gaynor, and Michael A. Connolly, was indicted in the United States district court for the southern district of Georgia for a conspiracy to defraud the United States of America, copy of which indictment is attached to this amendment and made a part hereof; that said indictment was based on the same facts as set out in the charges and specifications, for the conviction of which by said court-martial said Carter is now undergoing imprisonment—that is to say, charge I, specification 2; charge II, specification 6; charge III, specification 2, and charge IV, specification 1, as set out in the petition filed herein—and that said indictment was found after the circuit court of the United States for the southern district of New York had denied the application for a writ of *habeas corpus,* on October 20, 1899, mentioned in the petition herein.

FRANK P. BLAIR,
*Attorney for Petitioner.*

I. STANTON CARTER.

41 UNITED STATES OF AMERICA, *Northern District of Illinois, Northern Division,* } *ss:*

I. Stanton Carter, being duly sworn, upon his oath deposes and says that he has read the foregoing amendment subscribed by him and knows the contents thereof, and that the same is true.

I. STANTON CARTER.

Subscribed and sworn to before me this 24th day of October, 1900.

S. W. BURNHAM,
[SEAL.] *Clerk U. S. Circuit Court, Nor. Dist. of Ill.*

Leave to file this amendment is hereby granted.

A. M. THAYER,
*Circuit Judge.*

Endorsed: No. 7849. Amendment to petition. Filed Nov. 5, 1900. Geo. F. Sharitt, clerk.

42 UNITED STATES OF AMERICA, }
*Eastern Division, Southern District of Georgia.* }

United States District Court, November Term, 1899.

The grand jurors of the United States chosen, selected, impaneled, and sworn in and for the eastern division of the southern district of Georgia upon their oaths present:

First count. That heretofore, to wit, on the first day of January, in the year of our Lord one thousand eight hundred and ninety-seven, Benjamin D. Greene, John F. Gaynor, William T. Gaynor, Edward H. Gaynor, Michael A. Connally, and Oberlin M. Carter, being evil-disposed persons, all late of said division and district, did, within said division and district and within the jurisdiction of this court, unlawfully, knowingly, and feloniously amongst themselves and with divers other persons to the grand jurors aforesaid unknown, conspire, confederate, and agree together to defraud the United States of America of divers large sums of money by means of a certain fraudulent scheme devised by said Benjamin D. Greene, John F. Gaynor, William T. Gaynor, Edward H. Gaynor, Michael A. Connally, and Oberlin M. Carter, and which was then and there in process of execution by them; that said fraudulent scheme was first devised, concocted, and put in operation in said southern district of Georgia by and between the said Benjamin D. Greene, John F. Gaynor, William T. Gaynor, Edward H. Gaynor, Michael A. Connally, and Oberlin M. Carter on or about the year of our Lord one thousand eight hundred and ninety-one, and has been continuously in process of execution in said southern district of Georgia by and between said Benjamin D. Greene, John F. Gaynor, William T. Gaynor, Edward H. Gaynor, Michael A. Connally, and Oberlin M. Carter from about the said year eighteen hundred and ninety-one until on or about the first day of October, in the year of our Lord eighteen hundred and ninety-nine.

That the said Oberlin M. Carter was an officer of the United States Army, in the Corps of Engineers, and had been continuously from about the year of our Lord eighteen hundred and eighty-eight until about the twentieth day of July, in the year of our Lord
43 eighteen hundred and ninety-seven, as such engineer officer in local charge in said southern district of Georgia of what is usually called the "Savannah district" for the improvement by the

United States of rivers and harbors, and as such officer he was engaged in and about the execution of such river and harbor improvements as were made in said Savannah district within the southern judicial district of Georgia during such period, and as such officer in charge of said Savannah district he was vested with sundry powers, duties, and discretion during said period, and, amongst other things, with power, duty, and discretion in proposing, from time to time, projects for the improvement of the rivers and harbors in said district; with power, duty, and discretion in devising and drafting, from time to time, specifications for contracts for the improvements proposed to be made in said district, and with power, duty, and discretion in from time to time drafting and suggesting forms of advertisements for giving notice to the public that competitive bids would be received by him for the construction of such proposed works, and with power, duty, and large discretion in causing to be fixed and fixing the time such advertisements would be published prior to the opening of bids, and with power, duty, and discretion in suggesting and causing to be fixed and fixing the time designated in specifications for contracts within which the successful bidder would be required to commence work, and with power, duty, and discretion in giving out information in regard to such contracts to be let, and with power, duty, and discretion in receiving proposals for and recommending the awarding of such contracts, and with power, duty, and discretion in approving or rejecting the bonds required to be given by such contractors, and with power, duty, and discretion in superintending the work to be done by such contractors in said district and of approving and accepting or rejecting the work done by such contractors according as the same was in accordance with the requirements of such contracts or not, and with power, duty, and discretion in suggesting and approving modifications of such contracts, and with power, duty, and discretion in approving or rejecting the accounts rendered to him by such contractors for work done or claimed by such contractors to be done by them
44 according as said accounts should be fair and honest or false and fraudulent, and when in funds, as a disbursing officer, he was vested with power, duty, and discretion in paying such contractors or refusing to pay such contractors the amounts claimed by them to be due them for work done according as such claims were honest and fair or false and fraudulent.

That the said fraudulent scheme contemplated—

That the said Oberlin M. Carter should, as such engineer officer of the United States so in charge of said Savannah district, so fraudulently exercise the said powers of his office and the said discretion so vested in him that competition in the bidding for such contracts to be let by the United States through him should be cut off, and that the said Benjamin D. Greene, John F. Gaynor, William T. Gaynor, Edward H. Gaynor, Michael A. Connally, and Oberlin M. Carter, in the name of some one of them or some other person or corporation for their benefit, would be the only real bidders for such contract work in said district, and that all contracts which were from time to time let for the improvements of the rivers and harbors in

said Savannah district would be obtained by some one of said conspirators or by and in the name of some other person or corporation, but secretly for the benefit of said Benjamin D. Greene, John F. Gaynor, William T. Gaynor, Edward H. Gaynor, Michael A. Connally, and Oberlin M. Carter, and so that the said works in said district put out to be done for the United States on contract would be let at high and exorbitant cost to the United States of America, and that the said Oberlin M. Carter, as such engineer officer of the United States in charge of said Savannah district, should with fraudulent intent so devise and draft the specifications of contracts for constructing jetty works and training walls to be from time to time let by the United States in said district through him as to provide that the engineer in charge, as aforesaid, might, at his option, require to be put in the work by the contractor a large number of square yards of one specified design of what is usually called a log and brush mattress to be paid for by the United States to the contractor by the square yard, which design of mattress if so required to be put in by the engineer would make the cost of the fulfilling of the contract comparatively very great and expensive to the
45 contractor, and which specifications should further provide that the engineer in charge, as aforesaid, might, at his option, and at the same price per square yard to be paid by the United States to the contractor, in lieu of the use of said design of log and brush mattress of expensive construction, as aforesaid, require to be placed in the works by the contractor the same number of square yards of another specified design of what is usually called a brush mattress of much cheaper cost comparatively to the contractor when placed in the works and of very much less value to the United States, and that the description of the said design of mattress of cheaper cost to the contractor, as aforesaid, should be so vaguely set forth in the specifications that the same could easily by a fraudulent and strained construction of said description be made to apparently cover the acceptance and approval by said engineer in charge, as aforesaid, of large numbers of square yards of mattresses to be furnished by the contractor of a construction of brush mattresses of very much cheaper cost to the contractor furnishing the same and of very much less value to the United States than would be the same number of square yards of the log and brush mattresses of the other design of mattress which might under the specifications be called for by the engineer, as aforesaid, and that said specifications should be so devised and drafted, as aforesaid, by said Oberlin M. Carter in order that all persons not parties to said fraudulent scheme should be kept in ignorance until after the bids were all in, which design of mattress mentioned in the specifications the engineer in charge would require to be put in the works, and so that bidders not a party to said fraudulent scheme would be compelled to put in bids based on the design of mattress of the most expensive and costly construction mentioned in the specifications, while the said Benjamin D. Greene, John F. Gaynor, William T. Gaynor, Edward H. Gaynor, Michael A. Connally, and Oberlin M. Carter would be advised before the putting in and opening of bids that the said

Oberlin M. Carter, engineer in charge, would, if they or some one for them were the successful bidder-, only require to be put in the works under such contract mattresses made on the very cheapest design, and that design construed by
46 him, in the superintending, approving, and accepting of said works, most strongly against the United States and most liberally in favor of the contractor, with the intent that the said Benjamin D. Greene, John F. Gaynor, William T. Gaynor, Edward H. Gaynor, Michael A. Connally, and Oberlin M. Carter or some one of them or some persons or corporation acting secretly for their benefit would always be the successful bidders for such contract work at the very lowest cost to the contractor and at the very highest cost to the United States for the material put in consistent with keeping the fraud concealed, and that the said Oberlin M. Carter, as such engineer officer of the United States in charge of said Savannah district, should, with fraudulent intent, so devise and draft the specifications of contracts for jetty works, training walls, and river and harbor improvements to be from time to time let by the United States in said district through him as to require from the successful bidder for such contract work the furnishing at one price per unit of work and material of several types of such work and material largely varying in cost to the contractor and reserving by the provisions of the specifications the option to the said engineer officer in charge the determination, after the letting of said contract, which type of such work and material should be used, but that said Oberlin M. Carter, engineer in charge, would, prior to the time of opening bids for such contract work, secretly inform the said other parties to said fraudulent scheme that he would only require the cheapest type of such material and work to be put in under such contract, with intent to fraudulently enable the said Benjamin D. Greene, John F. Gaynor, William T. Gaynor, Edward H. Gaynor, Michael A. Connally, and Oberlin M. Carter, or some of them, or some person or corporation for their benefit, to obtain such contract at the least cost to themselves and greatest cost to the United States for the value of the work and material furnished and with the fraudulent intent that if the successful bidder should be some person not a party to said fraudulent scheme the said engineer officer in charge would require from said contractor for such work the furnishing of that type of such work and material specified in the contract most costly to the contractor, and that said engineer officer in charge, with
47 fraudulent intent, would in such case give the specifications such rigid and unfair construction against the interest of such contractor that the performance of such contract would be ruinous to such contractor, and thus further competition with the said Benjamin D. Greene, John F. Gaynor, William T. Gaynor, Edward H. Gaynor, Michael A. Connally, and Oberlin M. Carter for the obtaining of similar contract work would be thereafter effectually shut off, and that the said Oberlin M. Carter, as such engineer officer of the United States in charge of said Savannah district, with fraudulent intent, should in the actual construction of the work done under such contracts obtained by said Benjamin D. Greene, John F.

Gaynor, William T. Gaynor, Edward H. Gaynor, Michael A. Connally, and Oberlin M. Carter, or by one of them, or in the name of some person or corporation secretly for their benefit, so change the quantities and type of material and work required to be furnished by the contractor from the quantities and type of material and work used in the specifications to canvass for bids for such contracts as would ensu-e the contractors the maximum profit in such contract work at the least cost to the contractors, even though such change should give the United States work and material of much less value to the United States, and that said Oberlin M. Carter, as such engineer officer of the United States in charge of said Savannah district, should, when some person other than the said parties to said fraudulent scheme was the lowest bidder at the letting of such contract work, and one of said conspirators, or some one for their benefit, was a higher bidder for such contract work, recommend the rejection of such lowest bid for any slight defect in the proposal, while in similar instances, when it should become necessary for said conspirators to put in at the last minute a second bid to meet unanticipated competition at the letting of such contract work, said engineer officer would knowingly and corruptly approve for acceptance their proposals and guaranties known to him to be forgeries, and that said Oberlin M. Carter, as such engineer officer of the United States in charge of said Savannah district, should knowingly and fraudulently approve for payment accounts which should be so fraudulently rendered to him as such engineer officer in charge,

48 as aforesaid, by said Benjamin D. Greene, John F. Gaynor, William T. Gaynor, Edward H. Gaynor, Michael A. Connally, and Oberlin M. Carter, or by some one of them, or by and in the name of the person or corporation which should, by the successful operation of such fraudulent scheme, have obtained such contracts for the secret benefit of the said conspirators aforesaid, and which accounts should be so rendered, as aforesaid, for such inferior work and material to be put in on such works, as aforesaid, at the exorbitant and fraudulent prices stated in such contracts, so fraudulently to be made by said Oberlin M. Carter, as such engineer officer in charge, as aforesaid, with said conspirators or some person or corporation for them, as aforesaid, and that said Oberlin M. Carter, as such engineer officer in charge of said Savannah district, as aforesaid, would, when in funds as a disbursing officer, fraudulently pay over to the said conspirators, or to some one of them, or some person or corporation for their benefit, the amounts of money for which said accounts so rendered should be by said Oberlin M. Carter, as such engineer officer in charge, so approved, and that said conspirators should divide between them and appropriate to their own use said moneys so fraudulently to be obtained, and that said fraudulent scheme contemplated that the said Benjamin D. Greene, John F. Gaynor, William T. Gaynor, Edward H. Gaynor, Michael A. Connally, and Oberlin M. Carter would use some one or more or all of said means and devises aforesaid, and such other and additional devises as might become necessary, for the accomplishment of the general fraudulent design of the scheme hereinbefore set forth.

And that on the first day of January, in the year of our Lord eighteen hundred and ninety-seven, the said Benjamin D. Greene, John F. Gaynor, William T. Gaynor, Edward H. Gaynor, Michael A. Connally, and Oberlin M. Carter were proceeding with the construction of certain works in said eastern division of the southern district of Georgia under two contracts, which contracts had been prior to that times, to wit, on the eighth day of October, eighteen hundred and ninety-six, obtained by the said Benjamin D. Greene, John F. Gaynor, William T. Gaynor, Edward H. Gaynor, Michael A. Connally, and Oberlin M. Carter, for their secret benefit, in the name of the Atlantic Contracting Company, a corporation organized in the year eighteen hundred and ninety-two under the laws
49 of the State of West Virginia, and of which corporation the said Benjamin D. Greene, John F. Gaynor, and William T. Gaynor held all the shares of stock at the date of its charter, except stock of the par value of fifty dollars, and which contracts had been so obtained fraudulently from the United States by means of said fraudulent scheme and devices hereinbefore set forth through the said Oberlin M. Carter, engineer officer in charge of Savannah district, as aforesaid, and one of which said contracts was for the construction of jetties at Cumberland sound, within the said eastern division of the southern district of Georgia, and the other of said contracts was for the construction of training walls and improving the harbor of Savannah within the said eastern division of the southern district of Georgia, and the said Benjamin D. Greene, John F. Gaynor, William T. Gaynor, Edward H. Gaynor, Michael A. Connally, and Oberlin M. Carter, on the said first day of January, eighteen hundred and ninety-seven, in the said eastern division of the southern district of Georgia, then and there unlawfully, knowingly, and feloniously amongst themselves and with said divers other persons to the grand jurors aforesaid unknown, did band, conspire, confederate, and agree together, as aforesaid, to defraud the United States of said divers large sums of money hereinbefore mentioned by means of applying said fraudulent scheme in and to the execution and completion of the work under said contracts so made on the eighth day of October, eighteen hundred and ninety-six, as aforesaid, and in the obtaining of the money for the fraudulent accounts which should be rendered under said contracts to said Oberlin M. Carter, as such engineer officer, as aforesaid, and generally to carry said fraudulent scheme into execution in the obtaining of all contracts of like character which might thereafter be let in said Savannah district by the United States through the said Oberlin M. Carter, as such engineer officer, contrary to the form of the statute in such cases made and provided and against the peace and dignity of the said United States.

Second count. And the grand jurors aforesaid upon their oaths aforesaid do further present that, in pursuance of said conspiracy in the above count of this indictment set forth, the said Michael
50 A. Connally did, within the said eastern division of the southern district of Georgia and within the jurisdiction of said court, afterwards, to wit, on the seventeenth day of March,

A. D. 1897, then and there assists the said Oberlin M. Carter in the preparation of a certain document purporting to be articles of agreement entered into on the seventeenth day of March, A. D. 1897, between Oberlin M. Carter, Corps of Engineers, U. S. Army, of the first part, and the Atlantic Contracting Company of New York city, N. Y., of the second part, and which purports to modify the contract entered into by and between the Atlantic Contracting Company and said Oberlin M. Carter, captain, Corps of Engineers, for the United States, made on the eighth day of October, A. D. 1896, for work at the entrance of Cumberland sound, Georgia, which contract is mentioned in the above preceding count of this indictment, and which document so made on the seventeenth day of March, A. D. 1897, as aforesaid, purports to be signed by O. M. Carter, capt., Corps of Eng'rs, U. S. A., and by the Atlantic Contracting Company, John F. Gaynor, president, and by William T. Gaynor, secretary, and upon which the name of said Miach-el A. Connally appears as a witness, and he, the said Michael A. Connally, did then and there forge the name of said William T. Gaynor, secretary, so purporting to be signed to said document, and he, the said Michael A. Connally, did likewise then and there assist the said Oberlin M. Carter in the preparation of a document purporting to be dated the eighteenth day of March, A. D. 1897, and purporting to be the written consent of Anson M. Bangs and Eugene Hughes to the modified agreement dated March 17, 1897, above described, and he, the said Michael A. Connally, did then and there forge the said signatures of Anson M. Bangs and Eugene Hughes, signed to said document purporting to be such assent of said sureties, and did then and there forge the signatures of James C. Bogart and Henry Smith, which signatures purport to be signed on said document as witnessing the signatures of said Anson M. Bangs and Eugene Hughes to said document, and that he, the said Oberlin M. Carter, did then and there knowingly cause said forged documents to be then and there forwarded to the War Department of the United States for approval, contrary to the form of the statute in such case
51 made and provided and against the peace and dignity of the said United States.

Third count. And the grand jurors aforesaid upon their oaths aforesaid do further present that, in pursuance of said conspiracy in the first count of this indictment mentioned, within said eastern division of the southern district of Georgia and within the jurisdiction of this court, afterwards, to wit, on the first day of July, in the year of our Lord eighteen hundred and ninety-seven, the said Benjamin D. Greene, John F. Gaynor, William T. Gaynor, Edward H. Gaynor, Michael A. Connally, and Oberlin M. Carter did cause to be presented to the said Oberlin M. Carter, then and there an officer in the military service of the United States, to wit, captain in the Corps of Engineers, in charge of the Savannah district aforesaid, for approval, a certain claim against the United States, they, the said Benjamin D. Greene, John F. Gaynor, William T. Gaynor, Edward H. Gaynor, Michael A. Connally, and Oberlin M. Carter, then and there

well knowing said claim to be fraudulent, and which said claim was then and there in the words and figures following, to wit:

SAVANNAH, GA., *July* 1, 1897.

The United States Engineer Department to the Atlantic Contracting Company, Dr.

To labor and material furnished during the month of January, 1897, under formal written contract dated October 8, 1896, on work of improving harbor at Savannah, Georgia, as follows:

| | |
|---|---|
| 31,724.23 square yards of brush mattresses at $0.95..... | $30,138.02 |
| 2,297.86 cubic yards of fourth-class stone at $2.75..... | 6,319.11 |
| | 36,457.13 |
| Less 10 per cent. retained.. ..... | 3,645.71 |
| Amount due ..... | 32,811.42 |

Submitted by—

THE ATLANTIC CONTRACTING COMPANY,
By EDWARD H. GAYNOR, *Treasurer.*

contrary to the form of the statute in such case made and provided and against the peace and dignity of the said United States.

Fourth count. And the grand jurors aforesaid upon their oaths aforesaid do further present that, in pursuance of said conspiracy in the first count of this indictment mentioned, afterwards, to
52. wit, on the sixth day of July, in the year of our Lord eighteen hundred and ninety-seven, in the southern district of the State of New York and within the jurisdiction of this court, the said Oberlin M. Carter, as such engineer officer in charge of the Savannah district as aforesaid, did then and there issue to the said Atlantic Contracting Company a certain check signed by said Oberlin M. Carter as captain, Corps of Engineers, United States Army, drawn on the assistant treasurer of the United States, New York, and payable to the order of the Atlantic Contracting Company, for the sum of three hundred and forty-five thousand dollars for contract work, improving Cumberland sound, Georgia, and did then and there deliver the said check to the said John F. Gaynor in payment of a claim of the said Atlantic Contracting Company for the sum of three hundred and forty-five thousand dollars for work claimed to have been done by the said Atlantic Contracting Company in the improvement of Cumberland sound under said contract of October 8, 1896, in the first count of this indictment mentioned, which claim he, the said Oberlin M. Carter, then and there knew to be fraudulent, and which said check was then and there in the words and figures following, to wit:

War. U. S. ENG'R OFFICE, Engineers.
SAVANNAH, GA., *July* 6, 1897.

No. 270,537. C. Assistant treasurer of the U. S., New York,

State object for which drawn: Contract work, improving Cumberland sound, Ga.

Pay to the order of the Atlantic Contracting Co. three hundred and forty-five thousand $^{00}_{100}$ dollars ($345,000.00).

O. M. CARTER,
*Capt. Corps of Eng'r-, U. S. A.,*
*Engineer, U. S. A.*

contrary to the form of the statute in such case made and provided and against the peace and dignity of the said United States.

Fifth count. And the grand jurors aforesaid upon their oaths aforesaid do further present that, in pursuance of said conspiracy in the first count of this indictment mentioned, afterwards, to wit, on the sixth day of July, in the year of our Lord eighteen hundred and ninety-seven, in the southern district of the State of New
53 York and within the jurisdiction of this court, the said Oberlin M. Carter, as such engineer officer in charge of the Savannah district, as aforesaid, did then and there issue to the said Atlantic Contracting Company a certain check, signed by said Oberlin M. Carter, as captain, Corps of Engineers, United States Army, drawn on the assistant treasurer of the United States, New York, and payable to the order of the Atlantic Contracting Company, for the sum of two hundred and thirty thousand seven hundred and forty-nine dollars and ninety cents, for contract work, improving Savannah harbor, Georgia, and did then and there deliver the said check to the said John F. Gaynor in payment of a claim of the said Atlantic Contracting Company for the sum of two hundred and thirty thousand seven hundred and forty-nine dollars and ninety cents for work claimed to have been done by the said Atlantic Contracting Company in the improvement of Savannah harbor, Georgia, under said contract of October 8, 1896, in the first count of this indictment mentioned, which claim he, the said Oberlin M. Carter, then and there knew to be fraudulent, and which said check was then and there in the words and figures following, to wit:

War. U. S. ENG'R OFFICE, Engineers.
SAVANNAH, GA., *July* 6, 1897.

No. 270,536. B. Assistant treasurer of the U. S., New York,

State object for which drawn: Contract work, improving Savannah harbor, Ga.

Pay to the order of the Atlantic Contracting Co. two hundred and thirty thousand seven hundred and forty-nine $^{00}_{100}$ dollars ($230,749.00).

O. M. CARTER,
*Capt., Corps Eng., U. S. A.,*
*Engineer, U. S. A.*

contrary to the form of the statute in such case made and provided and against the peace and dignity of the said United States.

Sixth count. And the grand jurors aforesaid upon their oaths aforesaid do further present that on the said first day of January, in the year of our Lord one thousand eight hundred and ninety-seven, the said Benjamin D. Greene, John F. Gaynor, William T. Gaynor, Edward H. Gaynor, Michael A. Connally, and Oberlin M. Carter, being evil-disposed persons, all late of said division and district, did, within said division and district and
54 within the jurisdiction of this court, unlawfully, knowingly, and feloniously, amongst themselves and with divers other persons to the grand jurors aforesaid unknown, band, conspire, confederate, and agree together to defraud the United States of America of divers large sums of money by means of a certain fraudulent scheme devised by the said Benjamin D. Greene, John F. Gaynor, William T. Gaynor, Edward H. Gaynor, Michael A. Connally, and Oberlin M. Carter; that the said Oberlin M. Carter was on the day and year aforesaid an officer of the United States Army, in the Corps of Engineers, and was then and there, as such engineer officer, in local charge in said southern district of Georgia of what is usually called the Savannah district for the improvement by the United States of rivers and harbors, and as such officer he was then and there engaged in and about the execution of such river and harbor improvements as were being made and to be made in said Savannah district, within the said southern judicial district of Georgia, and as such engineer officer in charge of said Savannah district, as aforesaid, he was vested with the usual powers, duties, and discretion of engineer officers of the United States in charge of river and harbor improvement districts, and that the said Benjamin D. Greene, John F. Gaynor, William T. Gaynor, Edward H. Gaynor, Michael A. Connally, and Oberlin M. Carter then and there did band, conspire, confederate, and agree together, as aforesaid, that the said Oberlin M. Carter, as such engineer officer of the United States so in charge of said Savannah district, should so fraudulently exercise said powers, duties, and discretion of the said office of engineer in charge of said district that the competition provided for by law in the bidding for such contracts to be let for the United States through said engineer officer for the construction of the public improvements of the United States in the said Savannah district should be cut off, and that the said Benjamin D. Greene, John F. Gaynor, William T. Gaynor, Edward H. Gaynor, Michael A. Connally, and Oberlin M. Carter, in the name of some one of them or of some other person or corporation for their benefit, would be the only real bidders for such contract work in said district, and that all such contracts which were from time to time let for the improvements of
55 the rivers and harbors of said Savannah district would be so fraudulently and corruptly obtained by some one or other of said conspirators, or by and in the name of some other person or corporation, but secretly for the benefit of said Benjamin D. Greene, John F. Gaynor, William T. Gaynor, Edward H. Gaynor, Michael A. Connally, and Oberlin M. Carter, at high and exorbitant cost to

the United States for the work to be done and material to be furnished, and that the said Oberlin M. Carter would so devise, suggest, and inaugurate projects for the improvements of the rivers and harbors in said district and so devise and draft the specifications for work and contracts to be let for such improvements and so superintend the execution of such works, contracts for which should have been obtained by the said Benjamin D. Greene, John F. Gaynor, William T. Gaynor, Edward H. Gaynor, Michael A. Connally, and Oberlin M. Carter, or by some one of them, or in the name of some other person or corporation secretly for their benefit, that large amounts of unnecessary and useless work should fraudulently be undertaken and done under such contracts for the United States by such contractors on such contracts, and that in the execution of all contracts for improvements made in said district for the United States through the said Oberlin M. Carter, as such officer in charge, he, the said Oberlin M. Carter, as such engineer officer in charge, would exercise the powers, duties, and discretion of his office fraudulently and corruptly in favor of the contractor on such of said contracts as might be so obtained by the said Benjamin D. Greene, John F. Gaynor, William T. Gaynor, Edward H. Gaynor, Michael A. Connally, and Oberlin M. Carter, or by some one of them or other person or corporation for their secret benefit, as aforesaid, and that the said Oberlin M. Carter would so falsely and fraudulently exercise the powers, duties, and discretion of his office in the approval and acceptance of the work so fraudulently done under such contracts so let and executed for the said public works so constructed by the Government of the United States in said district under and through the said Oberlin M. Carter, as engineer officer in charge, that said contractors would receive payment for the construction of such works under such contract at high and exorbitant rates for the poorest and cheapest
56 class of material and work put in under said contracts at least cost to such contractors, contrary to the form of the statute in such case made and provided and against the peace and dignity of the said United States.

Seventh count. And the grand jurors aforesaid upon their oaths aforesaid do further present that, in pursuance of said conspiracy in the last preceding count of this indictment set forth, the said Benjamin D. Greene, John F. Gaynor, William T. Gaynor, Edward H. Gaynor, Michael A. Connally, and Oberlin M. Carter, afterwards, to wit, on the first day of July, in the year of our Lord eighteen hundred and ninety-seven, within said division and district, did then and there knowingly, wilfully, and feloniously cause to be presented to the said Oberlin M. Carter, then and there as such engineer officer in charge of said Savannah district, for approval and payment, a claim against the Government of the United States for the sum of three hundred and forty-five thousand dollars for labor, material, and supplies so claimed to have been furnished the United States of America during the months of December, 1896, January, 1897, February, 1897, March, 1897, April, 1897, May, 1897, and June, 1897, on work of improving Cumberland sound, Georgia, within said southern district of Georgia, under a formal written contract

dated October 8, 1896, they, the said Benjamin D. Greene, John F. Gaynor, William T. Gaynor, Edward H. Gaynor, Michael A. Connally, and Oberlin M. Carter, then and there well knowing said claim to be fraudulent, contrary to the form of the statute in such case made and provided and against the peace and dignity of the said United States.

Eighth count. And the grand jurors aforesaid and upon their oaths aforesaid do further present that, in pursuance of said conspiracy in the last but one preceding count in this indictment mentioned, afterwards, to wit, on the sixth day of June, in the year of our Lord eighteen hundred and ninety-seven, in the southern district of the State of New York and within the jurisdiction of this court, the said Oberlin M. Carter, as such engineer officer in charge of the Savannah district, as aforesaid, did then and there issue to the said Atlantic Contracting Company a certain check signed by said Oberlin M. Carter, as captain of engineers, United States
57 Army, drawn on the assistant treasurer of the United States, New York, and payable to the order of the Atlantic Contracting Company, for the sum of three hundred and forty-five thousand dollars, for contract work, improving Cumberland sound, Georgia, and did then and there deliver the said check to the said John F. Gaynor in payment of a claim of the said Atlantic Contracting Company for the sum of three hundred and forty-five thousand dollars for work claimed to have been done by the said Atlantic Contracting Company in the improvement of Cumberland sound under said contract of October 8, 1896, in the last preceding count of this indictment mentioned, which claim he, the said Oberlin M. Carter, then and there knew to be fraudulent, and which said check was then and there in the words and figures following, to wit:

War. U. S. Eng'r Office, Engineers.
Savannah, Ga., *July* 6, 1897.

No. 270,537. Assistant treasurer of the U. S.,
C. New York,

State object for which drawn: Contract work and improving Cumberland —, Ga.

Pay to the order of the Atlantic Contracting Co. three hundred and forty-five thousand $^{00}_{100}$ dollars.

O. M. CARTER,
*Capt. Corps of Eng'r-, U. S. A.,*
*Engineer, U. S. A.*

contrary to the form of the statute in such case made and provided and against the peace and dignity of the said United States.

Ninth count. And the grand jurors aforesaid upon their oaths aforesaid do further present that on the said first day of July, in the year of our Lord eighteen hundred and ninety-seven, within the eastern division of the southern district of Georgia and within the jurisdiction of this court, the said Benjamin D. Greene, John F. Gaynor, William T. Gaynor, Edward H. Gaynor, Michael A. Connally, and Oberlin M. Carter, did then and there unlawfully, know-

ingly, wilfully, and feloniously, amongst themselves and with divers other persons to the grand jurors aforesaid unknown, combine, conspire, confederate, and agree together to defraud the Government of the United States by obtaining the allowance and payment by the United States, through the said Oberlin M. Carter, he, the said Oberlin M. Carter, being then and there a captain in the Corps of Engineers of the United States Army, and as such captain in the Corps of Engi-
58 neers being then and there engaged in the work of improving for the Government the rivers and harbors of what is usually known as the "Savannah district" for the improvement of rivers and harbors, and he, the said Oberlin M. Carter, being then and there in the military service of the United States, and as such captain in the Corps of Engineers being then and there a disbursing officer of the United States entrusted with the disbursement of money applicable to such improvements in said Savannah district, of a certain fraudulent claim, and which said fraudulent claim was then and there a claim for labor and material claimed to have been furnished by the Atlantic Contracting Company, a corporation chartered under the laws of the State of West Virginia, under a contract theretofore entered into on the 8th day of October, A. D. 1896, for improving Cumberland sound, within the State of Georgia, and which contract had been entered into between the said Atlantic Contracting Company and the said Oberlin M. Carter, as captain in the Corps of Engineers of the United States —, as aforesaid, and which said fraudulent claim was for the sum of three hundred and forty-five thousand dollars for work, labor, and supplies claimed to have been furnished to the United States by said Atlantic Contracting Company for said work at Cumberland sound during the months of December, 1896, January, 1897, February, 1897, March, 1897, April 1897, May, 1897, and June, 1897. And the grand jurors aforesaid upon their oaths aforesaid do further present that the said Benjamin D. Greene, John F. Gaynor, William T. Gaynor, Edward H. Gaynor, Michael A. Connally, and Oberlin M. Carter, afterwards, to wit, on the first day of July, in the year of our Lord eighteen hundred and ninety-seven, in furtherance of and according to the said conspiracy, combination, confederacy, and agreement amongst themselves had, as aforesaid, did unlawfully and fraudulently cause to be presented to the said Oberlin M. Carter, as such officer and then and there in the military service of the United States, as aforesaid, a certain claim against the Government of the United States, they, the said Benjamin D. Greene, John F. Gaynor, William T. Gaynor, Edward H. Gaynor, Michael A. Connally, and Oberlin M. Carter, well knowing that said claim was fraudulent, for the purpose of obtaining the approval and
59 payment of said claim by the said Oberlin M. Carter, as such captain in the Corps of Engineers of the United States Army in charge of said Savannah district, as aforesaid, and which said fraudulent claim was then and there in the words and figures following, to wit:

SAVANNAH, GA., *July* 1, 1897.

The United States Engineer Department to the Atlantic Contracting Company, Dr.

To labor and material furnished during the month of December, 1896, on work of improving Cumberland sound, Georgia, under formal written contract dated October 8, 1896, as follows:

| | |
|---|---|
| 18,727.34 square yards of mattresses at $1.10..... | $20,600.07 |
| 1,968.06 cubic yards of third-class stone at $3.90..... | 7,675.43 |
| | 28,275.50 |
| Less 10 per cent. retained..... | 2,827.55 |
| Amount due..... | 25,447.95 |

Submitted by—

THE ATLANTIC CONTRACTING COMPANY,
By EDWARD H. GAYNOR, *Treasurer.*

contrary to the form of the statute in such case made and provided and against the peace and dignity of the said United States.

Tenth count. And the said grand jurors aforesaid upon their oaths aforesaid do further present that on the first day of July, in the year of our Lord eighteen hundred and ninety-seven, within the eastern division of the southern district of Georgia and within the jurisdiction of this court, the said Benjamin D. Greene, John F. Gaynor, William T. Gaynor, Edward H. Gaynor, Michael A. Connally, and Oberlin M. Carter did then and there unlawfully, knowingly, wilfully, and feloniously, amongst themselves and with divers other persons to the grand jurors aforesaid unknown, combine, conspire, confederate, and agree together to defraud the Government of the United States by obtaining the allowance and payment by the United States through the said Oberlin M. Carter, he, the said Oberlin M. Carter, being then and there a captain in the Corps of Engineers of the United States Army, and as such captain in the Corps of Engineers being then and there engaged in the work of improving for the Government the rivers and harbors of what is usually known
60 as the "Savannah district" for the improvement of rivers and harbors, and he, the said Oberlin M. Carter, being then and there in the military service of the United States, and as such captain in the Corps of Engineers being then and there a disbursing officer of the United States entrusted with the disbursement of money applicable to such improvements in said Savannah district, of a certain fraudulent claim, and which said fraudulent claim was then and there a claim for labor and material claimed to have been furnished by the Atlantic Contracting Company, a corporation chartered under the laws of the State of West Virginia, under a contract theretofore entered into on the 8th day of October, A. D. 1896, for improving harbor at Savannah, within the State of Georgia, and which contract had been entered into between the said Atlantic Contracting Company and the said Oberlin M. Carter, as captain in

the Corps of Engineers of the United States —, as aforesaid, and which said fraudulent claim was for the sum of two hundred and thirty thousand seven hundred and forty-nine dollars and ninety cents for work, labor, and supplies claimed to have been furnished to the United States by said Atlantic Contracting Company for said work at said harbor during the months of December, 1896, January, 1897, February, 1897, March, 1897, April, 1897, May, 1897, and June, 1897.

And the grand jurors aforesaid upon their oaths aforesaid do further present that the said Benjamin D. Greene, John F. Gaynor, William T. Gaynor, Edward H. Gaynor, Michael A. Connally, and Oberlin M. Carter afterwards, to wit, on the first day of July, in the year of our Lord eighteen hundred and ninety-seven, in furtherance of and according to the said conspiracy, combination, confederacy, and agreement amongst themselves had as aforesaid, did unlawfully and fraudulently cause to be presented to the said Oberlin M. Carter, as such officer and then and there in the military service of the United States, as aforesaid, a certain claim against the Government of the United States, they, the said Benjamin D. Greene, John F. Gaynor, William T. Gaynor, Edward H. Gaynor, Michael A. Connally, and Oberlin M. Carter, well knowing that said claim was fraudulent, for the purpose of obtaining the approval and payment of said claim by the said Oberlin M. Carter as such captain in the Corps of Engineers of the United States Army in charge of said Savannah district, as aforesaid, and which said fraudulent claim was then and there in the words and figures following, to wit:

61 SAVANNAH, GA., *July* 1, 1897.

The United States Engineer Department to the Atlantic Contracting Company, Dr.

To labor and material furnished during the month of February, 1897, under formal written contract dated October 8, 1896, on work of improving harbor at Savannah, Georgia, as follows:

| | |
|---|---|
| 23,151.66 square yards of mattresses at $0.95 | $21,994.08 |
| 1,544 cubic yards of fourth-class stone at $2.75 | 4,248.72 |
| | 26,242.80 |
| Less 10 per cent. retained | 2,624.28 |
| Amount due | 23,618.52 |

Submitted by—

THE ATLANTIC CONTRACTING COMPANY,
By EDWARD H. GAYNOR, *Treasurer.*

contrary to the form of the statute in such case made and provided and against the peace and dignity of the said United States.

MARION ERWIN,
*United States District Attorney.*

A true bill.

THOMAS S. McKEE, *Foreman.*

Dec. 8th, 1899.

(Indorsed:) No. 322. United States district court, eastern division, southern district of Georgia. United States *v.* Benjamin D. Greene *et al.* Indictment for conspiracy, etc. Filed Dec. 8, 1899. S. F. B. Gillespie, deputy clerk. Certified copy of original. Marion Erwin, U. S. attorney. No. 7849. Filed Nov. 5, 1900. Geo. F. Sharitt, clerk.

62 To the honorable the circuit court of the United States for the district of Kansas:

The undersigned, Robert W. McClaughry, warden of the United States penitentiary at Fort Leavenworth, Kansas, respectfully makes return to the writ, a copy of which is hereto annexed, marked "½ A," and says that he has the custody of the body of Oberlin M. Carter as the warden of the said penitentiary, and that he detains the said Carter by virtue of the directions of the Secretary of War, the said Carter being under sentence of a general court-martial, sentenced to be imprisoned at said United States penitentiary at Fort Leavenworth, Kansas, for five years, and that the said Carter is now in custody as aforesaid, undergoing said sentence of imprisonment, and your respondent says he is acting in this capacity as custodian of said Carter by virtue of general orders No. 172, headquarters of the army, adjutant general's office, Washington, D. C., September 29, 1899, the same containing the charges and specifications under and by virtue of which said Carter was tried, the findings of the general court-martial, the sentence of the said Carter by the same, the approval of the findings of said court-martial, with the exceptions stated in such orders by the Secretary of War, the approval of the sentence by the latter, and the approval and confirmation by the President; and your respondent respectfully calls attention to said general orders, a duly authenticated copy of which, marked "A," is filed herewith; and the attention of the court is respectfully invited thereto, the contention of respondent being that the said Carter has been lawfully convicted and sentenced by the said general court-martial, which had jurisdiction of the person of the said Carter and of the various offences for which he was tried.

Your respondent begs leave further to represent that on the second day of October, 1899, Abram J. Rose, the attorney for the said Carter, on behalf of the said Carter, obtained from the circuit court of the United States for the southern district of New York a writ of *habeas corpus*, commanding Captain Benjamin K. Roberts to have the body of the said Carter, together with the time and cause
63 of his imprisonment and detention, before the said court on the fourth day of October, 1899; that upon the return of said writ the body of the said Carter was produced before the said court, and return was made showing that the said Carter was detained in custody by authority of general orders No. 172, of September 29, 1899, being the orders hereinbefore cited as the cause and authority of the present detention, by authority of which said general orders the respondent made return that the said Carter was not unlawfully detained, and prayed for dismissal of the writ; that during the pendency of said *habeas corpus* before the said circuit court the said Carter

paid the fine provided for in the said petition; that after due hearing the said circuit court dismissed the said writ, and the said Carter was remanded to the custody from which he was produced, in conformity to rule thirty-four (see *In re* Carter, 97 Fed. Rep., 496; briefs in the case filed herewith, marked B to E); that thereafter an appeal was filed and a writ of error was granted and issued out of the United States circuit court of appeals for the second circuit upon the said circuit court for the southern district of New York, and the record and proceedings of said cause and all things concerning the same were sent to the said circuit court of appeals on the twentieth day of November, 1899, and the said record and all proceedings thereunder and all things touching the same were duly certified to the said circuit court of appeals as aforesaid; authenticated copy of said transcript filed herewith, marked "F."

That the said case on appeal came on to be heard in the United States circuit court of appeals on the 9th day of January, 1900, before Judges Wallace and Shipman, and on the 24th day of said month said court rendered a decision affirming the judgment of the circuit court below, with costs. (See 99 Fed. Rep., 948; duly authenticated copies of briefs in the case filed herewith, marked G, H, & I.)

That on February 5th, 1900, a petition for a writ of certiorari in the cause to the circuit court of appeals was submitted to the Supreme Court of the United States, which, on February 26th, 1900, was denied. (See Carter *vs.* Roberts, 176 U. S., 684; duly au-
64 thenticated copies of transcript, petition, and briefs filed herewith, marked "J & K.")

That on the same day of the denial of the aforesaid petition, namely, on the 26th day of February, 1900, an appeal was taken to the Supreme Court and a writ of error sued out to review the order of the circuit court dismissing the said *habeas corpus* and remanding the said Carter.

That thereafter in this proceeding the Solicitor General of the United States filed a "motion to dismiss or affirm;" that after a hearing of said motion the Supreme Court, of the 23rd day of April, 1900, dismissed said appeal and writ of error for want of jurisdiction. (See Carter *v.* Roberts, 177 U. S., 496; duly authenticated copies of transcript of record, motion of appellee and defendant in error, and brief of appellant and plaintiff in error filed herewith, marked "L.")

That upon the mandate issuing out of the Supreme Court in this cause, on the 24th day of April, 1900, to the circuit court of the southern district of New York, the said circuit court, on the 25th day of April, 1900, entered judgment accordingly and remanded the said Carter to the custody from which he was produced for the purpose of the execution of the sentence; duly authenticated copies of mandate and judgment filed herewith, marked "M."

And that in accordance with said judgment and sentence the said Carter was received at the said penitentiary on the 27th day of April, 1900, and has been in the said penitentiary until this date of the production of his body before this court undergoing the sentence hereinbefore mentioned.

Your respondent further represents that he objects to the admission by this court of the alleged abstract of evidence claimed to have been taken before the said court-marshal, submitted by the petitioner and made a part of his petition (Exhibit "A"), because—

First. The record of the whole proceedings of a court-martial is required by law to be reduced to writing, and is deposited in the office of the Judge Advocate General of the army. This record itself, or a copy thereof, duly authenticated, as required by section 882, Revised Statutes, is the best evidence, and the alleged abstract is therefore inadmissible.

65–1411 And, second:

Even if the latter was admissible, or a duly authenticated copy of it was presented, it would be wholly inadmissible for the purpose for which it is sought to be introduced, it being a rule of law that in a *habeas corpus* proceeding the court will not examine the evidence for the purpose of determining whether the party should be pronounced innocent of the offenses for which he is imprisoned.

And, third:

This case presents no exceptions justifying the departure from this rule, the record presented with this return affording the information necessary in the case.

In obedience to the said writ of *habeas corpus* the respondent herewith produces before the court the body of the said Oberlin M. Carter, but, for the reasons set forth, prays this honorable court to dismiss the said writ.

ROBERT W. McCLAUGHRY,
*Warden United States Penitentiary,*
*Fort Leavenworth, Kansas.*

Leavenworth, Kansas, November 23, 1900.

Endorsed: No. 7849. *In re* Oberlin M. Carter. Petition. Return of warden. Filed Nov. 23, 1900. Geo. F. Sharitt, clerk.

1412 *General Orders No.* 172.

HEADQUARTERS OF THE ARMY,
ADJUTANT GENERAL'S OFFICE,
WASHINGTON, D. C., *September* 29, 1899.

Before a general court-martial which convened at Savannah, Georgia, pursuant to special orders No. 282, of December 2, 1897; special orders No. 306, of December 31, 1897, and special orders No. 1, of January 3, 1898, from headquarters of the army, adjutant general's office, and of which Brigadier General Elwell S. Otis, United States Army, was president, and Colonel Thomas F. Barr, assistant judge advocate general, was judge advocate, was arraigned and tried—

Captain Oberlin M. Carter, Corps of Engineers.

Charge I.—"Conspiring to defraud the United States, in violation of the 60th article of war."

Specification I.—"In that Captain Oberlin M. Carter, Corps of Engineers, United States Army, devising and intending to defraud the United States, and to aid the Atlantic Contracting Company, a corporation, and John F. Gaynor, William T. Gaynor, Edward H. Gaynor, Anson M. Bangs, and divers other persons, all of whom were likewise with him, the said Carter, devising and intending to defraud the United States, did, on or about August 1, 1892, and thereafter to June 6, 1896, with the corporation and persons named, unlawfully combine and conspire to defraud the United States of divers large sums of money by aiding the said corporation and persons to obtain the allowance and payment of certain false and fraudulent claims indicated by the payments hereinafter alleged to have been made; and in pursuance of the said conspiracy the said Captain Oberlin M. Carter, in the months of August and September, 1892, being the officer of the United States in local charge of the river and harbor district usually called the Savannah district, and of the improvement by the United States of rivers and harbors in said district, did, with the knowledge and consent of the said other parties named, so advertise for proposals for contracts for certain works of improvement in Cumberland sound, in said district, and so manage and conduct such advertising and the matter of giving out information in regard to the contract to be let, and the matter of receiving proposals and awarding the contract, as to enable
1413 the said Edward H. Gaynor to secure the contract for said work and to have the same entered into by the United States with him, September 16, 1892; and in further pursuance of the said conspiracy the said Edward H. Gaynor afterwards, to wit, from about the 16th day of September, 1892, to the 25th day of May, 1893, did furnish and put into said work certain mattresses, stone, and other material which were different in kind and character from the mattresses, stone, and other material contracted for in said contract, and very much less costly to the said Edward H. Gaynor, as well as of less value to the United States, which said mattresses, stone, and other material so furnished and put into the work the said Captain Carter, in further pursuance of said conspiracy, did receive and accept and cause to be received and accepted for the United States as and for the mattresses, stone, and other material contracted for, and did cause payments to be made out of the moneys of the United States to the said Edward H. Gaynor on account of the said furnishing and delivery of the same, and as if the said mattresses, stone, and other material had been such as were stipulated for in the contract, and at the same rate, cost, and price as if they had been, as follows, and on or about the dates named: November 17, 1892, $1,713.23; December 16, 1892, $21,102.67; December 31, 1892, $24,529.95; January 5, 1893, $493.59; February 4, 1893, $20,274.07; March 6, 1893, $16,433.14; April 3, 1893, $14,218.86; May 2, 1893, $27,436.06; May 22, 1893, $9,337.85; and May 25, 1893, $26,706.46.

"And in further pursuance of the said conspiracy the said Captain Carter, about August, September, and October, 1892, did advertise for proposals for a contract for improving the harbor at Savannah, Georgia, in said river and harbor district, and did so manage and

conduct the matter of such advertising and the matter of giving out information in regard to the contract to be let, and the matter of receiving proposals and awarding the contract, as to enable the said The Atlantic Contracting Company to secure the contract for said work and to have the same entered into by the United States with it October 22, 1892; and in further pursuance of the said con-
1414 spiracy the said The Atlantic Contracting Company, from about the 22nd day of October, 1892, to the 4th day of May, 1895, did furnish and put into said work certain mattresses, stone, and other material which were different in kind and character from the mattresses, stone, and other material contracted for in said contract and very much less costly to the said The Atlantic Contracting Company as well as of less value to the United States, which said mattresses, stone, and other material so furnished and put into the work, the said Captain Carter, in further pursuance of said conspiracy, did receive and accept and cause to be received and accepted for the United States, as and for the mattresses, stone, and other material contracted for, and did cause payments to be made out of the moneys of the United States, as to the said The Atlantic Contracting Company, on account of the said furnishing and delivery of the same, and as if the said mattresses, stone, and other material had been such as were stipulated for in the contract, and at the same rate, cost, and price as if they had been, as follows, and on or about the dates named: November 17, 1892, $3,265.61; December 3, 1892, $15,000.00; December 16, 1892, $8,507.45; December 31, 1892, $20,000.00; January 10, 1893, $25,416.81; February 4, 1893, $42,722.83; February 8, 1893, $15.71; March 6, 1893, $44,985.47; March 31, 1893, $38,076.11; April 3, 1893, $20,584.51; May 2, 1893, $30,000.00; May 31, 1893, $6,105.69; July 3, 1893, $5,968.18; July 3, 1893, $34,177.94; July 3, 1893, $46,592.39; August 3, 1893, $57,013.64; September 1, 1893, $97,159.99; October 2, 1893, $59,554.84; November 3, 1893, $52,452.22; December 1, 1893, $85,752.28; January 2, 1894, $44,175.02; January 5, 1894, $27,057.00; February 2, 1894, $75,118.71; March 1, 1894, $44,630.22; July 7, 1894, $202,481.40; September 8, 1894, $481,933.67; October 2, 1894, $88,922.63; November 9, 1894, $44,303.92; December 5, 1894, $38,903.72; January 11, 1895, $39,368.67; February 1, 1895, $31,659.28; March 2, 1895, $25,612.62; April 5, 1895, $63,656.50, and May 4, 1895, $19,860.08.

"And in further pursuance of the said conspiracy the said Captain Carter, about January, February, and March, 1893, did advertise for proposals for a contract for improving Jekyl creek, Georgia, in said river and harbor district, and did so manage and conduct the
1415 matter of such advertising and the matter of giving out information in regard to the contract to be let, and the matter of receiving proposals and awarding the contract, as to enable the said The Atlantic Contracting Company to secure the contract for said work, and to have the same entered into by the United States with it, March 1, 1893; and in further pursuance of said conspiracy the said The Atlantic Contracting Company, from about the 1st day of March, 1893, to about the 3d day of July, 1893, did furnish and put into said work certain mattresses, stone, and other material which

were different in kind and character from the mattresses, stone, and other material contracted for in said contract, and very much less costly to the said The Atlantic Contracting Company as well as of less value to the United States; which said mattresses, stone, and other material so furnished and put into the work the said Captain Carter in further pursuance of the conspiracy, did receive and accept, and cause to be received and accepted, for the United States and as and for the mattresses, stone, and other material contracted for, and did cause payments to be made out of the moneys of the United States to the said The Atlantic Contracting Company on account of said furnishing and delivering of the same, and as if the said mattresses, stone, and other material had been such as were stipulated for in the contract, and at the same rate, cost, and price as if they had been, as follows, and on or about the dates named: June 3, 1893, $3,309.40; July 3, 1893, $3,595.38, and July 3, 1893, $14,591.00.

"And in further pursuance of the said conspiracy the said Captain Carter, about August, September, October, and November, 1894, did advertise for proposals for improving Cumberland sound, in said river and harbor district, and did so manage and conduct the matter of such advertising and the matter of giving out information in regard to the contract to be let, and the matter of receiving proposals and awarding the contract, as to enable the said Anson M. Bangs to secure the contract for said work and to have the same entered into by the United States with him, November 15, 1894; and in further pursuance of the said conspiracy the said Anson M. Bangs,
1416 from about the 15th day of November, 1894, to about the 4th day of May, 1895, did furnish and put into said work certain mattresses, stone, and other material which were different in kind and character from the mattresses, stone and other material contracted for in said contract, and very much less costly to the said Anson M. Bangs, as well as of less value to the United States; which said mattresses, stone, and other material so furnished and put into the work, the said Captain Carter, in further pursuance of the conspiracy, did receive and accept, and cause to be received and accepted for the United States as and for the mattresses, stone, and other material contracted for; and did cause payments to be made out of the moneys of the United States to the said Anson M. Bangs, on account of said furnishing and delivery of the same, and as if the said mattresses, stone and other material had been such as were stipulated for in the contract, and at the same rate, cost and price as if they had been, as follows, and on or about the dates named: December 5, 1894, $874.73; January 11, 1895, $9,845.35; February 1, 1895, $17,800.50; March 2, 1895, $21,287.65; April 5, 1895, $29,659.82, and May 4, 1895, $32,059.92.

"And in further pursuance of the said conspiracy the said Captain Carter, about March and April, 1895, did advertise for proposals for improving Altamaha river, Georgia; Darien harbor, Georgia; Jekyl creek, Georgia, and inside water route between Savannah, Georgia, and Ferdinanda, Florida, in said river and harbor district, and did so manage and conduct the matter of such advertising and the matter of giving out information in regard to the contract to be let and the matter of receiving proposals and awarding the contract as

to enable the said William T. Gaynor to secure the contract for said work and to have the same entered into by the United States with him April 20th, 1895, and in further pursuance of said conspiracy the said William T. Gaynor, from about the 20th day of April, 1895, to about the 1st day of July, 1895, did furnish and put into said work certain mattresses, stone, and other material which were different in kind and character from the mattresses, stone, and other material contracted for in said contract, and very much less
1417 costly to the said William T. Gaynor, as well as of less value to the United States; which said mattresses, stone, and other material so furnished and put into the work, the said Captain Carter, in further pursuance of the conspiracy, did receive and accept, and cause to be received and accepted for the United States as and for the mattresses, stone, and other material contracted for; and did cause payments to be made out of the moneys of the United States to the said William T. Gaynor on account of said furnishing and delivery of the same, and as if the said mattresses, stone, and other material had been such as were stipulated for in the contract, and at the same rate, cost, and price as if they had been, as follows, and on or about the dates named: June 4, 1895, $17,728.81, and July 1, 1895, $27,861.32."

Specification II.—"In that Captain Oberlin M. Carter, Corps of Engineers, United States Army, devising and intending to defraud the United States and to aid the Atlantic Contracting Company, a corporation, and John F. Gaynor, William T. Gaynor, and Edward H. Gaynor, and Anson M. Bangs, and divers other persons, all of whom were likewise with him, the said Carter, devising and intending to defraud the United States, did, with the corporation and persons named, unlawfully combine and conspire to defraud the United States of divers large sums of money by aiding the said The Atlantic Contracting Company to obtain the allowance and payment of certain false and fraudulent claims hereinafter described; and in pursuance of the said conspiracy the said Oberlin M. Carter, in the months of June, July, and August, September, and October, 1896, being an officer of the United States in local charge of the river and harbor district usually called the Savannah district, and of the improvement by the United States of rivers and harbors in said district, did, with the knowledge and consent of the said other parties named, so advertise for proposals for contracts for certain works of improvement in the harbor of Savannah, Georgia, in said district, and so manage and conduct said advertising, and the matter of giving out information in regard to the contract to be let, and the matter of receiving proposals and awarding the contract, as to enable the said The Atlantic Contracting Company to secure the con-
1418 tract for said work, and to have the same entered into by the United States with it October 8th, 1896; and in further pursuance of the said conspiracy the said The Atlantic Contracting Company afterwards, to wit, from about the 8th day of October, 1896, to July 31st, 1897, did furnish and put into said work certain mattresses, stone, and other material which were different in kind and character from the mattresses, stone, and other material contracted for in said con-

tract, and very much less costly to the said The Atlantic Contracting Company as well as of less value to the United States; which said mattresses, stone, and other material so furnished and put into the work the said Captain Carter, in further pursuance of said conspiracy, did receive and accept, and cause to be received and accepted, for the United States, as and for the mattresses, stone, and other material contracted for; and did, on or about July 6th, 1897, cause to be paid, out of the moneys of the United States, $230,749.90 to the said The Atlantic Contracting Company on account of the said furnishing and delivery of the same, and as if the said mattresses, stone, and other material had been such as were stipulated for in the contract, and at the same rate, cost, and price as if they had been.

"And in further pursuance of the said conspiracy the said Captain Carter, about June, July, August, September, and October, 1896, did advertise for proposals for a contract for improving Cumberland sound, Georgia, in said river and harbor district, and so manage and conduct the matter of such advertising, and the matter of giving out information in regard to the contract to be let, and the matter of receiving proposals and awarding the contract, as to enable the said The Atlantic Contracting Company to secure the contract for said work and to have the same entered into by the United States with it October 8th, 1896; and in further pursuance of the said conspiracy the said The Atlantic Contracting Company, from about the 8th day of October, 1896, to the 31st day of July, 1897, did furnish and put into said work certain mattresses, stone, and other material which were different in kind and character from the mat-
1419 tresses, stone, and other materials contracted for in said contract, and very much less costly to the said The Atlantic Contracting Company, as well as of less value to the United States; which said mattresses, stone, and other material so furnished and put into the work the said Captain Carter, in further pursuance of said conspiracy, did receive and accept, and cause to be received and accepted, for the United States, as and for the mattresses, stone, and other material contracted for; and did, on or about July 6th, 1897, cause to be paid, out of the moneys of the United States, $345,000.00 to the said The Atlantic Contracting Company, on account of said furnishing and delivery of the same, and as if the said mattresses, stone, and other material had been such as were stipulated for in the contract and at the same rate, cost, and price as if they had been.

"This on the 6th day of June, 1896, and thereafter to the 1st day of August, 1897."

Charge II.—"Causing false and fraudulent claims to be made against the United States, in violation of the 60th article of war."

Specification I.—"In that Captain Oberlin M. Carter, Corps of Engineers, United States Army, being at the time the officer in local charge of river and harbor improvements in the Savannah river and harbor districts, did cause to be made certain false and fraudulent claims against the United States and in favor of Edward H. Gaynor, knowing the same to be false and fraudulent, to wit: The claims represented by the following vouchers, submitted by the said

Captain Carter with his accounts and marked 'Appropriation for improving Cumberland sound, Georgia and Florida':

Voucher No. 18, for $1,713.23, November, 1892;
Voucher No. 13, for $21,102.67, December, 1892;
Voucher No. 20, for $24,529.95, December, 1892;
Voucher No. 26, for $493.59, January, 1893;
Voucher No. 3, for $20,274.07, February, 1893;
Voucher No. 2, for $16,433.14, March, 1893;
Voucher No. 1, for $14,218.86, April, 1893;
Voucher No. 2, for $27,436.06, May, 1893;
Voucher No. 5, for $9,337.85, May, 1893;
Voucher No. 6, for $26,706.46, May, 1893;

1420 which said false and fraudulent claims the said Captain Carter caused so be made, by knowingly permitting Edward H. Gaynor, who had previously entered into a contract, dated September 16, 1892, to furnish to the United States certain mattresses, stone, and other materials of specified kinds and qualities, for constructing works in said river and harbor district, to furnish and put into said works mattresses, stone, and other material different from, inferior to, cheaper, and of less value to the United States than those contracted for, and by receiving and accepting and paying for the same as of the kinds and qualities contracted for, and by falsely certifying to the correctness of the said vouchers, well knowing that the mattresses, stone, and other material charged for in said vouchers as having been furnished had not in fact been furnished, each of the said claims having been made in or about the month named in the above description of the voucher relating to it."

Specification II.—"In that Captain Oberlin M. Carter, Corps of Engineers, United States Army, being at the time the officer in local charge of river and harbor improvements in the Savannah river and harbor districts, did cause to be made certain false and fraudulent claims against the United States and in favor of the Atlantic Contracting Company, a corporation, knowing the same to be false and fraudulent, to wit, the claims represented by the following vouchers submitted by the said Captain Carter with his accounts and marked 'Appropriation for improving harbor at Savannah, Georgia':

Voucher No. 11, $3,265.61, November, 1892;
Voucher No. 2, $15,000.00, December, 1892;
Voucher No. 24, $8,507.45, December, 1892;
Voucher No. 28, $20,000.00, December, 1892;
Voucher No. 3, $25,416.81, January, 1893;
Voucher No. 1, $42,722.83, February, 1893;
Voucher No. 3, $15.71, February, 1893;
Voucher No. 2, $44,985.47, March, 1893;
Voucher No. 8, $38,076.11, March, 1893;
Voucher No. 2, $20,584.51, April, 1893;
Voucher No. 4, $30,000.00, May, 1893;
Voucher No. 28, $6,105.69, May, 1893;

1421 Voucher No. 3, $5,968.18, July, 1893;
Voucher No. 4, $34,177.94, July, 1893;

Voucher No. 5, $46,592.39, July, 1893;
Voucher No. 2, $57,013.64, August, 1893;
Voucher No. 1, $97,159.99, September, 1893;
Voucher No. 1, $59,554.84, October, 1893;
Voucher No. 1, $52,452.22, November, 1893;
Voucher No. 2, $85,752.28, December, 1893;
Voucher No. 1, $44,175.02, January, 1894;
Voucher No. 2, $27,057.00, January, 1894;
Voucher No. 4, $75,118.71, February, 1894;
Voucher No. 6, $44,630.22, March, 1894;
Voucher No. 7, $202,481.40, July, 1894;
Voucher No. 10, $481,933.67, September, 1894;
Voucher No. 7, $88,922.63, October, 1894;
Voucher No. 48, $44,303.92, November, 1894;
Voucher No. 11, $38,903.72, December, 1894;
Voucher No. 41, $39,368.67, January, 1895;
Voucher No. 7, $31,659.28, February, 1895;
Voucher No. 10, $25,612.62, March, 1895;
Voucher No. 30, $63,656.50, April, 1895;
Voucher No. 22, $19,860.08, May, 1895;

which said false and fraudulent claims the said Captain Carter caused to be made by knowingly permitting the said Atlantic Contracting Company, which had previously entered into a contract dated October 2, 1892, to furnish the United States certain mattresses, stone and other material of specified kinds and qualities for constructing works in said river and harbor district, to furnish and put into said works mattresses, stone, and other material different from, inferior to, cheaper, and of less value to the United States than those contracted for; and by receiving and accepting and paying for the same as of the kinds and qualities contracted for, and by falsely certifying to the correctness of the said vouchers, well knowing that the mattresses, stone, and other material charged for in said vouchers as having been furnished had not in fact been furnished; each of the said claims having been made in or about the month named in the above description of the voucher relating to it."

1422 Specification III.—"In that Captain Oberlin M. Carter, Corps of Engineers, United States Army, being at the time the officer in local charge of river and harbor improvements in the Savannah river and harbor district, did cause to be made certain false and fraudulent claims against the United States and in favor of the Atlantic Contracting Company, a corporation, knowing the same to be false and fraudulent, to wit: Claims represented by the following vouchers submitted by the said Captain Carter with his accounts and marked 'Appropriation for improving Jekyl creek, Georgia':

Voucher No. 2, $3,309.40, June, 1893;
Voucher No. 1, $3,595.38, July, 1893;

and by following voucher, submitted by the said Captain Carter with his accounts and marked 'Appropriation for improving waterway between Savannah, Georgia, and Ferdinanda, Florida. Applied to that work at Jekyl creek, Georgia':

Voucher No. 1, $14,591.00, July, 1893;

which said false and fraudulent claims the said Captain Carter caused to be made, by knowingly permitting the said Atlantic Contracting Company, which had previously entered into a contract dated March 1, 1893, to furnish the United States certain mattresses, stone and other material of specified kinds and qualities for constructing works in said river and harbor district, to furnish and put into said works mattresses, stone and other material different from, inferior to, cheaper, and of less value to the United States than those contracted for; and by receiving and accepting and paying for the same as of the kinds and qualities contracted for, and by falsely certifying to the correctness of the said vouchers, well knowing that the mattresses, stone and other material charged for in said vouchers as having been furnished had not in fact been furnished; each of the said claims having been made in or about the month named in the above description of the voucher relating to it."

Specification IV.—"In that Captain Oberlin M. Carter, Corps of Engineers, United States Army, being at the time the officer in local charge of river and harbor improvements in the Savannah
1423 river and harbor district, did cause to be made certain false and fraudulent claims against the United States and in favor of Anson M. Bangs, knowing the same to be false and fraudulent, to wit: The claims represented by the following vouchers submitted by the said Captain Carter with his accounts, and marked 'Appropriation for improving Cumberland sound, Georgia':

Voucher No. 13, $874.73, December, 1894;
Voucher No. 42, $9,845.35, January, 1895;
Voucher No. 8, $17,800.50, February, 1895;

and by the following vouchers submitted by the said Captain Carter with his accounts, and marked 'Appropriation for improving Cumberland sound, Georgia and Florida':

Voucher No. 9, $21,287.65, March, 1895;
Voucher No. 29, $29,659.82, April, 1895;
Voucher No. 23, $32,059.92, May, 1895;

which said false and fraudulent claims the said Captain Carter caused to be made by knowingly permitting the said Anson M. Bangs, who had previously entered into a contract, dated November 15, 1894, to furnish the United States certain mattresses, stone and other material, of specified kinds and qualities, for constructing works in said river and harbor district, to furnish and put into said work mattresses, stone and other material, different from, inferior to, cheaper, and of less value to the United States than those contracted for; and by receiving and accepting and paying for the same as of the kinds and qualities contracted for, and by falsely certifying to the correctness of the said vouchers, well knowing that the mattresses, stone and other material charged for in said vouchers as having been furnished had not in fact been furnished; each of the said claims having been made in or about the month named in the above description of the voucher relating to it."

Specification V.—"In that Captain Oberlin M. Carter, Corps of Engineers, United States Army, being at the time the officer in local

charge of river and harbor improvements in the Savannah river and harbor district, did cause to be made certain false and fraudulent claims against the United States and in favor of William T. Gaynor, knowing the same to be false and fraudulent, to wit: The claims represented by the following voucher submitted by the said
1424 Captain Carter with his accounts, and marked 'Appropriation for improving harbor at Darien, Georgia':

Voucher No. 16, $17,728.81, June, 1895;

and by the following voucher submitted by the said Captain Carter with his accounts and marked 'Appropriation for improving harbor at Darien, Georgia; improving Altamaha river, Georgia; improving waterway between Savannah, Georgia, and Ferdinanda, Florida; improving Jekyl creek, Georgia':

Voucher No. 14, $27,861.32, July, 1895;

which said false and fraudulent claims the said Captain Carter caused to be made, by knowingly permitting William T. Gaynor, who had previously entered into a contract dated April 20, 1895, to furnish the United States certain mattresses, stone, and other materials, of specified kinds and qualities, for constructing works in said river and harbor district, to furnish and put into said work mattresses, stone, and other material, different from, inferior to, cheaper, and of less value to the United States than those contracted for, and by receiving and accepting and paying for the same as of kinds and qualities contracted for, and by falsely certifying to the correctness of said vouchers, well knowing that the mattresses, stone, and other material charged for in said vouchers as having been furnished had not in fact been furnished; each of the said claims having been made in or about the month named in the above description of the voucher relating to it."

Specification VI.—"In that Captain Oberlin M. Carter, Corps of Engineers, United States Army, being at the time the officer in local charge of river and harbor improvements in the Savannah river and harbor district, did cause to be made certain false and fraudulent claims against the United States and in favor of the Atlantic Contracting Company, a corporation, knowing the same to be false and fraudulent, to wit: The claim represented by the following voucher, submitted by the said Captain Carter with his accounts and marked 'Appropriation for improving harbor at Savannah, Georgia':

Voucher No. 8, $230,749.90, July, 1897;

1425 and the claim represented by the following voucher, submitted by the said Captain Carter with his accounts and marked 'Appropriation for improving Cumberland sound, Georgia and Florida':

Voucher No. 9, $345,000.00, July, 1897;

which said false and fraudulent claims the said Captain Carter caused to be made by knowingly permitting the said Atlantic Contracting Company, which had previously entered into contracts, dated October 8, 1896, to furnish the United States certain mattresses, stone, and other material, of specified kinds and qualities, for constructing works in said river and harbor district, to furnish and put into said works, mattresses, stone and other material different from,

inferior to, cheaper, and of less value to the United States than those contracted for; and by receiving and accepting and paying for the same as of the kinds and qualities contracted for, and by falsely certifying to the correctness of the said vouchers, well knowing that the mattresses, stone, and other material charged for in said vouchers as having been furnished, had not in fact been furnished; each of the said claims having been made in or about the month named in the above description of the voucher relating to it."

Specification VII.—"In that Captain Oberlin M. Carter, Corps of Engineers, United States Army, being the engineer officer in local charge of the works of the river and harbor improvement in the Savannah district, did cause to be prepared a pay-roll, the same being voucher No. [illegible] to his account with the United States for the month of December, 1896, appropriation for improving the harbor at Savannah, Georgia, upon which voucher the said Carter did cause to be entered the names of certain persons, hereinafter named, as laborers, and did cause to be presented to him, the said Captain Carter, for payment, and did cause to be paid to the said persons according to said voucher, knowing the same to be false and fraudulent, for services as laborers during the month of December, 1896, the following amounts, to wit: To William Naylor the sum of one dollar ($1.00); to H. Robert[illegible] the sum of four dollars ($4.00); to D. A. Holland the sum of four dollars and fifty cents ($4.50); to S. G. Vinson the sum of twelve dollars and twenty-five cents ($12.25); to P. P. Cotton the sum of six dollars and fifty
1426 cents ($6.50); to J. D. Robinson, Jr., the sum of fifty cents ($0.50); the claims for such services being false and fraudulent in that none of the said persons had rendered services as laborers as set forth in said voucher; and he, the said Carter, well knowing that such claims were false and fraudulent.

"This at Savannah, Georgia, on or about December 21, 1896."

Specification VIII.—"In that Captain Oberlin M. Carter, Corps of Engineers, United States Army, being the engineer officer in local charge of the works of river and harbor improvements of the Savannah district, did cause to be entered on voucher No. 5 of his account with the United States for the month of January, 1897, appropriation for improving harbor at Savannah, Georgia, among other things, an account against the United States for the construction by the Atlantic Contracting Company, during the month of December, 1896, of seventy-six (76) linear feet of piling in repairing the Garden Bank training wall near Savannah, Georgia, at $1.60 per linear foot, amounting to $121.60, and did cause to be presented to him, the said Captain Carter, for payment, and did cause to be paid to the said Atlantic Contracting Company, according to said voucher, a claim against the United States in the sum of one hundred and twenty-one dollars and sixty cents ($121.60), the said claim being false and fraudulent, in that only forty-eight (48) linear feet of the piling charged in said account *was* actually constructed, and the service actually rendered as to the other twenty-eight (28) feet charged for was not the construction of piling in repairing said training wall, but was the driving of seven (7) guide-piles for sink-

ing mattresses, the said guide-piles having been driven by the said Atlantic Contracting Company for itself and its sole use and convenience in sinking said mattresses; and he, the said Captain Carter, well knowing that said claim was false and fraudulent.

"This at Savannah, Georgia, on or about January 12, 1897."

Specification IX.—"In that Captain Oberlin M. Carter, Corps of Engineers, United States Army, being the engineer officer in local charge of the works of river and harbor improvement of the Savannah district, did cause to be entered on voucher No. 27 to
1427 his account with the United States for the month of March, 1897, appropriation for improving harbor at Savannah, Georgia, on account against the United States for the construction by the Atlantic Contracting Company during the month of February, 1897, of two hundred and forty (240) linear feet of pile-work in repairing training walls near Savannah, Georgia, at $1.60 per linear foot, amounting to $384.00, and did cause to be presented to him, the said Captain Carter, for payment, and did cause to be paid to the said Atlantic Contracting Company, according to said voucher, a claim against the United States in the sum of three hundred and eighty-four dollars ($384.00); the said claim being false and fraudulent, in that the service actually rendered was not the construction of two hundred and forty (240) linear feet of pile-work in repairing said training walls, but was the driving of sixty guide-piles for sinking mattresses, the said guide-piles having been driven by said Atlantic Contracting Company for itself and its sole use and convenience in sinking said mattresses, and he, the said Captain Carter, well knowing that said claim was false and fraudulent.

"This at Savannah, Georgia, on or about the tenth day of March, 1897."

Specification X.—"In that Captain Oberlin M. Carter, Corps of Engineers, United States Army, being the engineer officer in local charge of the works of river and harbor improvement of the Savannah district, did cause to be entered on voucher No. 21 to his account with the United States for the month of June, 1897, appropriation for improving harbor at Savannah, Georgia, an account against the United States for the construction by the Atlantic Contracting Company, during the month of May, 1897, of sixty-eight (68) linear feet of pile dams in repairing training walls and spur dams near Savannah, Georgia, at $1.60 per linear foot, amounting to $108.80, and did cause to be presented to him, the said Captain Carter, for payment, and did cause to be paid to the said Atlantic Contracting Company, according to said voucher, a claim against the United States in the sum of one hundred and eight dollars and eighty cents ($108.80); the said claim being false and fraudulent in that the service actually rendered was not the
1428 construction of sixty-eight (68) linear feet of pile dams in repairing said training walls and spur dams, but was the driving of seventeen (17) guide-piles for sinking mattresses; the said guide-piles having been driven by said Atlantic Contracting Company for itself and its sole use and convenience in sinking said mattresses;

and he, the said Captain Carter, well knowing that said claim was false and fraudulent.

"This at Savannah, Georgia, on or about the nineteenth day of June, 1897."

Charge III.—"Conduct unbecoming an officer and a gentleman, in violation of the 61st article of war."

Specification I.—"In that Captain Oberlin M. Carter, Corps of Engineers, United States Army, being the officer in local charge for the United States of river and harbor improvements in the Savannah river and harbor district, did willfully and knowingly cause the following amounts to be paid, out of the moneys of the United States subject to his order and control as such officer in charge of said improvements, the accounts on which the same were paid being false, the amounts paid not being due or owing from the United States to the parties paid or to any one, and he, the said Captain Carter, well knowing this to be the case; the said accounts, the amounts paid, and the payments being those designated by the following vouchers (and the entries therein and endorsements thereon) submitted by the said Captain Carter with his accounts, and marked 'Appropriation for improving Cumberland sound, Georgia and Florida:'

Voucher No. 18, $1,713.23, November, 1892;
Voucher No. 13, $21,102.67, December, 1892;
Voucher No. 20, $24,529.95, December, 1892;
Voucher No. 26, $493.59, January, 1893;
Voucher No. 3, $20,274.07, February, 1893;
Voucher No. 2, $16,433.14, March, 1893;
Voucher No. 1, $14,218.86, April, 1893;
Voucher No. 2, $27,436.06, May, 1893;
Voucher No. 5, $9,337.85, May, 1893;
Voucher No. 6, $26,706.46, May, 1893;

and those indicated and designated by the following vouchers,
1429 and the entries therein and endorsements thereon, submitted by the said Captain Carter with his accounts and marked 'Appropriations for improving harbor at Savannah, Georgia:'

Voucher No. 11, $3,265.61, November, 1892;
Voucher No. 2, $15,000.00, December, 1892;
Voucher No. 24, $8,507.45, December, 1892;
Voucher No. 28, $20,000.00, December, 1892;
Voucher No. 3, $25,416.81, January, 1893;
Voucher No. 1, $42,722.83, February, 1893;
Voucher No. 3, $15.71, February, 1893;
Voucher No. 2, $44,985.47, March, 1893;
Voucher No. 8, $38,076.11, March, 1892;
Voucher No. 2, $20,584.51, April, 1893;
Voucher No. 4, $30,000.00, May, 1893;
Voucher No. 28, $6,105.69, May, 1893;
Voucher No. 3, $5,968.18, July, 1893;
Voucher No. 4, $34,177.94, July, 1893;
Voucher No. 5, $46,592.39, July, 1893;
Voucher No. 2, $57,013.64, August, 1893;
Voucher No. 1, $97,159.99, September, 1893;

Voucher No. 1, $59,554.84, October, 1893;
Voucher No. 1, $52,452.22, November, 1893;
Voucher No. 2, $85,752.28, December, 1893;
Voucher No. 1, $44,175.02, January, 1894;
Voucher No. 2, $27,057.00, January, 1894;
Voucher No. 4, $75,118.71, February, 1894;
Voucher No. 6, $44,630.22, March, 1894;
Voucher No. 7, $202,481.40, July, 1894;
Voucher No. 10, $481,933.67, September, 1894;
Voucher No. 7, $88,922.63, October, 1894;
Voucher No. 48, $44,303.92, November, 1894;
Voucher No. 11, $38,903.72, December, 1894;
Voucher No. 41, $39,3 8.67, January, 1895;
Voucher No. 7, $31,659.28, February, 1895;
Voucher No. 10, $25,612.62, March, 1895;
Voucher No. 30, $63,656.50, April, 1895;
Voucher No. 22, $19,860.08, May, 1895;

and those indicated and designated by the following vouchers (and the entries therein and endorsements thereon), submitted by
1430 the said Captain Carter with his accounts and marked 'Appropriation for improving Jekyl creek, Georgia':

Voucher No. 2, $3,309.40, June, 1893;
Voucher No. 1, $3,595.38, July, 1893;

and the one indicated and designated by the following voucher (and the entries therein and endorsements thereon), submitted by the said Captain Carter with his accounts and marked 'Appropriation for improving waterway between Savannah, Georgia, and Ferdinanda, applied to that work at Jekyl creek, Georgia':

Voucher No. 1, $14,591.00, July, 1893;

and those indicated and designated by the following vouchers (and the entries therein and endorsements thereon), submitted by the said Captain Carter with his accounts and marked 'Appropriation for improving Cumberland sound, Georgia':

Voucher No. 12, $874.73, December, 1894;
Voucher No. 42, $9,845.35, January, 1895;
Voucher No. 8, $17,800.50, February, 1895;

and those indicated and designated by the following vouchers (and the entries therein and endorsements thereon), submitted by the said Captain Carter with his accounts and marked 'Appropriation for improving Cumberland sound, Georgia and Florida':

Voucher No. 9, $21,287.65, March, 1895;
Voucher No. 29, $29,659.82, April, 1895;
Voucher No. 23, $32,059.92, May, 1895;

and the one indicated and designated by the following voucher (and the entries therein and endorsements thereon), submitted by the said Captain Carter with his accounts and marked 'Appropriation for improving harbor at Darien, Georgia':

Voucher No. 16, $17,728.81, June, 1895;

and the one indicated and designated by the following voucher (and the entries therein and endorsements thereon), submitted by the said Captain Carter with his accounts and marked 'Appropriation for

improving harbor at Darien, Georgia. Improving Altahama river, Georgia. Improving waterway between Savannah, Georgia, and Ferdinanda, Florida. Improving Jekyl creek, Georgia':

Voucher No. 14, $27,861.32, July, 1895;

1431 and the said Captain Carter causing each of the said payments to be made in or about the month named in the above description of the voucher relating to it, by drawing and delivering a check as such officer in charge of river and harbor improvements, by which he ordered and directed that the amount indicated be paid out of the moneys of the United States then under his control as such officer."

Specification II.—"In that Captain Oberlin M. Carter, Corps of Engineers, United States Army, being the officer in local charge for the United States of river and harbor improvements in the Savannah river and harbor district, did wilfully and knowingly cause the following amounts to be paid out of the moneys of the United States subject to his order and control as officer in charge of said improvements to the Atlantic Contracting Company, a corporation; the accounts on which the same were paid being false, and the amounts paid not being due or owing from the United States to the said company, or to any one, and he, the said Captain Carter, well knowing this to be the case; the said accounts and amounts paid and the payments being those designated by the following voucher (and the entries therein and endorsements thereon), submitted by the said Captain Carter with his accounts and marked 'Appropriation for improving harbor at Savannah, Georgia':

Voucher No. 8, $230,749.90, July, 1897;

and the one indicated and designated by the following voucher (and the entries therein and endorsements thereon), submitted by the said Captain Carter with his accounts and marked 'Appropriation for improving Cumberland sound, Georgia and Florida':

Voucher No. 9, $345,000, July, 1897;

each of the said payments having been caused to be made on or about July 6, 1897, by the said Captain Carter drawing and delivering a check as such officer in charge of river and harbor improvements, by which the payment was ordered and directed to be made out of moneys of the United States under his control as such officer."

Specification III.—"In that Captain Oberlin M. Carter, Corps of Engineers, United States Army, being the engineer officer in local charge of the works of river and harbor improvement of the

1432 Savannah district, did, at Savannah, Georgia, on or about December 31, 1896, in submitting to the Chief of Engineers, United States Army, a comparative estimate of the cost of improving Savannah harbor, in which estimate there was an item of '360,000 square yards brush mattresses,' make the following statement regarding said item:

"'In the specifications only 200,000 square yards of mattresses are given, but as new soundings show that 300,000 square yards will be required, this estimate has been changed as provided in par. 44 of the specifications.'

"Meaning by the word 'specifications' the specifications to the contract with the Atlantic Contracting Company, for improving Savannah harbor, dated October 8, 1896, which statement was false in fact, as no new soundings had been made between June 6, 1896, the date of said specifications and said date of making said false statement, and which statement was known by him (the said Captain Carter) to be false in fact and was intended to deceive."

Specification IV.—"In that Captain Oberlin M. Carter, Corps of Engineers, United States Army, being the engineer officer in local charge of the works of river and harbor improvement of the United States in the Savannah district, having caused to be prepared a pay-roll, the same being voucher No. 30 to his account with the United States for the month of December, 1896, appropriation for improving harbor at Savannah, Georgia, and having caused to be entered on said voucher the names of certain persons as laborers during the month of December, 1896, and having caused to be paid to said persons divers sums amounting in all to twenty-nine dollars and fifty cents ($29.50), did make and sign the following certificate on said voucher, to wit:

"'I certify that the above pay-roll is correct and just, and the "days" for which payments have been made were days of eight hours each.

O. M. CARTER,
*Capt. Corps of Engineers.*'

which certificate was false and fraudulent in that none of said persons had rendered services as laborers as set forth in said
1433 voucher No. 30; and which certificates were known by him, the said Captain Carter, to be false and was intended to deceive.

"This at Savannah, Georgia, on or about December 21, 1896."

Specification V.—"In that Captain Oberlin M. Carter, Corps of Engineers, United States Army, being the engineer officer in local charge of the works of river and harbor improvements of the Savannah district, having caused to be entered on voucher No. 5 to his account with the United States for the month of January, 1897, appropriation for improving Savannah harbor, at Savannah, Georgia, among other things, an account against the United States, for the construction by the Atlantic Contracting Company, during the month of December, 1896, of seventy-six (76) linear feet of piling in repairing the Garden Bank training wall, near Savannah, Georgia, at $1.60 per linear foot, amounting to $121.60, did make and sign the following certificate on said voucher, to wit:

"'I certify that the above account is correct and just; the articles have been expended and applied to the purpose for which purchased. The mode of expenditure adopted was most economical and advantageous to the Government.

O. M. CARTER,
*Capt. Corps of Engineers.*'

which certificate was false in fact in that only forty-eight (48) linear feet of the piling charged in said account *was* actually constructed, and the service actually rendered as to the other twenty-eight (28) feet charged for was not the construction of piling in repairing said training wall, but was the driving of seven (7) guide-piles for sinking mattresses; the said guide-piles having been driven by said Atlantic Contracting Company for itself and its sole use and convenience in sinking said mattresses; and which said certificates was well known by the said Carter to be false in fact, and was intended to deceive.

"This at Savannah, Georgia, on or about January 12, 1897."

Specification VI.—"In that Captain Oberlin M. Carter, Corps of Engineers, United States Army, being the engineer officer in local charge of the works of river and harbor improvement of the
1434 Savannah district, having caused to be entered on voucher No. 27 to his account with the United States for the month of March, 1897, appropriation for improving the harbor of Savannah, Georgia, an account against the United States for the construction, by the Atlantic Contracting Company, during the month of February, 1897, of two hundred and forty (240) linear feet of pile-work in repairing training walls near Savannah, Georgia, at $1.60 per linear foot, amounting to $384.00, did make and sign the following certificate on said voucher, to wit:

"'I certify that the above account is correct and just; the articles have been expended and applied to the purpose for which purchased. The mode of expenditure adopted was most economical and advantageous to the Government.

O. M. CARTER,
*Capt. Corps of Engineers.*'

which said certificate was false in fact, in that the service actually rendered was not the construction of two hundred and forty (240) linear feet of pile-work in repairing said training walls, but was the driving of sixty (60) guide-piles for sinking mattresses; the said guide-piles having been driven by said Atlantic Contracting Company for itself and its sole use and convenience in sinking said mattresses; and which said certificate was well known by the said Carter to be false in fact, and was intended to deceive.

"This at Savannah, Georgia, on or about the tenth day of March, 1897."

Specification VII.—"In that Captain Oberlin M. Carter, Corps of Engineers, United States Army, being the engineer officer in local charge of the works of river and harbor improvement of the Savannah district, having caused to be entered in voucher No. 21 to his account with the United States for the month of June, 1897, appropriation for improving harbor at Savannah, Georgia, an account against the United States for the construction by the Atlantic Contracting Company during the month of May, 1897, of sixty-eight (68) linear feet of pile dams in repairing training wall and spur dams near Savannah, Georgia, at $1.60 per linear foot, amounting to $108.80, did make and sign the following certificate on said voucher, to wit:

"'I certify that the above account is correct and just.
1435 The mode of expenditure adopted was the most economical and advantageous to the Government.

O. M. CARTER,
*Capt. Corps of Engineers.*'

which certificate was false in fact, in that the service actually rendered was not the construction of sixty-eight (68) linear feet of pile dams in repairing said training walls and spur dams, but was the driving of seventeen (17) guide-piles for sinking mattresses; the said guide-piles having been driven by said Atlantic Contracting Company for itself and its sole use and convenience in sinking said mattresses; and which said certificate was well known by the said Carter to be false in fact and was intended to deceive.

"This at Savannah, Georgia, on or about the nineteenth day of June, 1897."

Specification VIII.—"In that Captain Oberlin M. Carter, Corps of Engineers, United States Army, devising and intending to defraud the city of Savannah, Georgia, and to aid the Atlantic Contracting Company, a corporation, and John F. Gaynor, William T. Gaynor, Edward H. Gaynor, Anson M. Bangs, and divers other persons, all of whom were likewise with him, the said Captain Carter, devising and intending to defraud the said city, did, on or about February 20, 1896, and thereafter to June 30, 1896, with the said company and the persons named, unlawfully combine and conspire to defraud the said city of divers large sums of money, and to wrongfully compel it, the said city, to dispose of certain valuable rock owned by it, under unfavorable circumstances to it, in order that the said Atlantic Contracting Company might be enabled to purchase the same from the city at a price far below the real cost and value of the same; and in pursuance of the said conspiracy, the said Captain Carter, during the months of February, March, April, May and June, 1896, being the officer of the United States in charge of the river and harbor district, usually called the Savannah district and of the improvements by the United States of rivers and harbors in said district in which the said rock was situated (in a body of navigable water, and outside of the harbor lines of the same, by and under the revocable permission of the Secretary of War), did use
1436 his said position as officer in charge of said district and improvements, and the powers and influence of the same, to have the Secretary of War revoke the said permission and require the said city to remove its said rock from the position occupied by it in the harbor; the means used by him to accomplish this being, among other things, false and misleading statements in letters to his superior officers, and in endorsements on letters referred to him from the War Department, as to the necessity for prompt and speedy removal of the said rock from the position occupied by it in the harbor; and also like statements and other representations made by him to various officials of the said city, and others, orally and in writing."

Specification IX.—"In that Oberlin M. Carter, Corps of Engineers, United States Army, being the officer in charge of the Savannah

river and harbor district, and having been required by the Chief of Engineers, United States Army, by the endorsement on the letter of one Paulding, to furnish information in regard to the proposed acquisition by the United States of certain lands on Hutchinson's island, near Savannah, Georgia, for river and harbor improvement purposes, did, in an endorsement of said letter, dated October 21, 1896, state as follows, to wit:

"'When operations were to begin, excessive rentals were demanded by property-owners, some of whom had taken possession of wharves as a speculation with a view to obtaining excessive damages. The work would have been delayed and its cost increased by about $50,000, and it was therefore abandoned;' which said statement was false, and was known to him, the said Captain Carter, to be false, and was intended by him to deceive Brigadier General William P. Craighill, Chief of Engineers, United States Army.

"This at Savannah, Georgia, on or about October 21, 1896."

Specification X.—"In that Captain Oberlin M. Carter, Corps of Engineers, United States Army, being duly sworn as a witness for the defendant in the case of James B. Brown *vs.* The Atlantic Contracting Company then pending in the city court of Savannah,
1437 Georgia, in which the subject-matter of the litigation was certain rock said to have been delivered by the said Brown to the said company, and then by the company to the United States, to go into certain river and harbor improvements carried on under the said Captain Carter as officer in charge for the United States, did testify on oath in regard to said rock to the effect that the United States did not receive and pay for it, but that they merely allowed the company to dump the same into the works along with the rock received and paid for, the said company not being paid for it; which said testimony was false, in that the United States had received and paid said company for it, and was well known by the said Captain Carter to be false, and was intended by him to deceive the said court and its jury impaneled to try the said case.

"This at Savannah, Georgia, on or about March 15, 1897."

Specification XI.—"In that Captain Oberlin M. Carter, Corps of Engineers, United States Army, being the engineer officer in local charge of the works of river and harbor improvements of the United States in the Savannah district, and having received from one Alfred Hirt, for the United States, on or about December, 1896, the sum of one hundred and thirty-two dollars and ten cents ($132.10) on account of delay of said Hirt in returning, and expense of returning, a diving outfit belonging to the United States and pertaining to the United States snag-boat Satilla, did fail to account, and has failed to account, to the United States for the said sum, or any part thereof, from the time of receiving said sum to the present time, viz., December 10, 1897."

Specification XII.—"In that Captain Oberlin M. Carter, Corps of Engineers, United States Army, being in the city of New York, on or about the 25th day of May, 1897, did, while there, cause a telegram to be sent to the Secretary of War, purporting to come from him in Savannah, Georgia, whereby he intended to deceive the Sec-

retary of War as to where he, the said Captain Carter, was on that date.

"This was at New York, on or about May 25, 1897."

Specification XIII.—"In that Captain Oberlin M. Carter, Corps of Engineers, United States Army, having left Savannah, Georgia, on or about the 2nd day of August, 1894, and having gone to the
1438 State of Montana, did on the 16th day of August, 1894, cause a letter to be forwarded to the Chief of Engineers, United States Army, dated Savannah, Georgia, reporting his, the said Captain Carter's, departure from Savannah on that day, whereby he intended to deceive Brigadier General Thomas L. Casey, Chief of Engineers, United States Army.

"This in Montana, on or about August 16th, 1894."

Specification XIV.—"In that Captain Oberlin M. Carter, Corps of Engineers, United States Army, in a personal report of himself as such officer, made to the Chief of Engineers, United States Army, for the month of April, 1894, did report himself present at his station from the 3rd to the 7th day of April, 1894, both inclusive, which said report was false, in that he was absent from his station during said time (part of it in New York); and which report was well known to him to be false, and was intended to deceive.

"This on or about April 30th, 1894."

Specification XV.—"In that Captain Oberlin M. Carter, Corps of Engineers, United States Army, in a personal report of himself as such officer, made to the Chief of Engineers, United States Army, for the month of August, 1894, did report himself present at his station from the 3rd to the 15th day of August, 1894, both inclusive, which said report was false, in that he was absent from his station during said time (part of it in New York, St. Paul, and Yellowstone national park); and which report was well known to him to be false, and was intended to deceive.

"This on or about August 31st, 1894."

Specification XVI.—"In that Captain Oberlin M. Carter, Corps of Engineers, United States Army, in a personal report of himself as such officer, made to the Chief of Engineers, United States Army, for the month of September, 1894, did report himself present at his station from the 23rd to the 27th day of September, 1894, both inclusive, which said report was false, in that he was absent from his station during said time (part of it in Cincinnati, Ohio); and which report was well known to him to be false and was intended to deceive.

1439 "This on or about September 30, 1894."

Specification XVII.—"In that Captain Oberlin M. Carter, Corps of Engineers, United States Army, in a personal report of himself as such officer made to the Chief of Engineers, United States Army, for the month of October, 1894, did report himself as present at his station on the 4th and 5th days of October, 1894, which said report was false, in that he was absent from his station during said days, and which report was well known to him to be false, and was intended to deceive.

"This on or about October 31, 1894."

Specification XVIII.—"In that Captain Oberlin M. Carter, Corps of Engineers, United States Army, in a personal report of himself as such officer, made to the Chief of Engineers, United States Army, for the month of November, 1894, did report himself present at his station on the 11th and 12th days of November, 1894, which said report was false, in that he was absent from his station during said time (part of it in New York); and which report was well known to him to be false, and was intended to deceive.

"This on or about November 30, 1894."

Specification XIX.—"In that Captain Oberlin M. Carter, Corps of Engineers, United States Army, in a personal report of himself as such officer, made to the Chief of Engineers, United States Army, for the month of December, 1894, did report himself present at his station from the 8th to the 12th day of December, 1894, both inclusive, and from the 24th to the 31st day of December, 1894, both inclusive, which said report was false, in that he was absent from his station during said times (parts of them in New York); and which report was well known to him to be false and was intended to deceive.

"This on or about December 31, 1894."

Specification XX.—"In that Captain Oberlin M. Carter, Corps of Engineers, United States Army, in a personal report of himself as such officer, made to the Chief of Engineers, United States Army, for the month of January, 1895, did report himself present at his station from the 1st to the 9th day of January, 1895, both inclusive,
which said report was false, in that he was absent from his
1440 station during said time (part of it in New York), and which
report was well known to him to be false and was intended to deceive.

"This on or about January 31, 1895."

Specification XXI.—"In that Captain Oberlin M. Carter, Corps of Engineers, United States Army, in a personal report of himself as such officer made to the Chief of Engineers, United States Army, for the month of July, 1895, did report himself present at his station from the 3rd to the 9th day of July, 1895, both inclusive, which said report was false, in that he was absent from his station during the said time (part of it in New York), and which report was well known to him to be false and was intended to deceive.

"This on or about July 31, 1895."

Specification XXII.—"In that Captain Oberlin M. Carter, Corps of Engineers, United States Army, in a personal report of himself as such officer made to the Chief of Engineers, United States Army, for the month of March, 1897, did report himself present at his station from the second to the ninth day of March, 1897, both inclusive, which said report was false in that he was absent from his station during said time (part of it in New York); and which report was well known to him to be false, and was intended to deceive.

"This at Savannah, Georgia, on or about the 31st day of March, 1897."

Specification XXIII.—"In that Captain Oberlin M. Carter, Corps of Engineers, United States Army, in a personal report of himself

as such officer made to the Chief of Engineers, United States Army, for the month of May, 1897, did report himself present at his station on the 24th day of May, 1897, which said report was false, in that he was absent from his station on said day (and was in New York) and which report was well known to him to be false, and was intended to deceive.

"This at Savannah, Georgia, on or about May 31, 1897."

*Charge IV.*—"*Embezzlement, as defined in section 5488, Revised* Statutes of the United States, in violation of the 62nd article of war."

Specification I.—"In that Captain Oberlin M. Carter, Corps of Engineers, United States Army, being the officer in charge for the United States of river and harbor improvements in the Savan-
1441 nah river and harbor district, and, as such officer in charge of said improvements, being a disbursing officer of the United States, and having entrusted to him large amounts of public money of the United States, did wilfully and knowingly apply for a purpose not authorized by law large sums of the said moneys so entrusted to him, by wilfully and knowingly causing the amounts hereinafter named to be paid out of the said moneys which were subject to his order and control as such officer in charge of said improvements; the accounts on which the same were paid being false, the amounts paid not being due or owing from the United States to the parties paid, or to any one, and he, the said Captain Carter, well knowing this to be the case; the said accounts, the amounts paid, and the payments being those designated by the following voucher (and the entries therein and the endorsements thereon), submitted by the said Captain Carter with his accounts and marked 'Appropriation for improving harbor at Savannah, Georgia':

Voucher No. 8 ($230,749.90), July, 1897;

and the one indicated and designated by the following voucher (and the entries therein and endorsements thereon), submitted by the said Captain Carter with his accounts and marked 'Appropriation for improving Cumberland sound, Georgia and Florida':

Voucher No. 9 ($345,000.00), July, 1897;

each of the said payments having been caused to be made on or about July 6, 1897, by the said Captain Carter drawing and delivering a check as such officer in charge of river and harbor improvements, by which the payment was ordered and directed to be made out of moneys of the United States under his control as such officer."

Specification II.—"In that Captain Oberlin M. Carter, Corps of Engineers, United States Army, being the officer in charge for the United States of river and harbor improvements in the Savannah river and harbor district, and as such officer in charge of said improvements, being a disbursing officer of the United States, and having entrusted to him large amounts of public money of the United States, did wilfully and knowingly apply, for a purpose not authorized by law, large sums of the said moneys so entrusted
1442 to him, by wilfully and knowingly causing the following amounts to be paid out of the said moneys which were sub-

ject to his order and control as such officer in charge of said improvements; the accounts on which the same were paid being false, the amounts paid not being due or owing from the United States to the parties paid, or to any one, and he, the said Captain Carter, well knowing this to be the case; the said accounts, the amounts paid, and the payments being those designated by the following vouchers (and the entries therein and endorsements thereon), submitted by the said Captain Carter with his accounts and marked 'Appropriation for improving Cumberland sound, Georgia and Florida':

Voucher No. 18, for $1,713.23, November, 1892;
Voucher No. 13, for $21,102.67, December, 1892;
Voucher No. 20, for $24,529.95, December, 1892;
Voucher No. 26, for $493.59, January, 1893;
Voucher No. 3, for $20,274.07, February, 1893;
Voucher No. 2, for $16,433.14, March, 1893;
Voucher No. 1, for $14,218.86, April, 1893;
Voucher No. 2, for $27,436.06, May, 1893;
Voucher No. 5, for $9,337.85, May, 1893;
Voucher No. 6, for $26,706.46, May, 1893;

and those indicated and designated by the following vouchers (and the entries therein and endorsements thereon) submitted by the said Captain Carter with his accounts, and marked 'Appropriation for improving harbor at Savannah, Georgia':

Voucher No. 11, $3,265.61, November, 1892;
Voucher No. 2, $15,000.00, December, 1892;
Voucher No. 24, $8,507.45, December, 1892;
Voucher No. 28, $20,000.00, December, 1892;
Voucher No. 3, $25,416.81, January, 1893;
Voucher No. 1, $42,722.83, February, 1893;
Voucher No. 3, $15.71, February, 1893;
Voucher No. 2, $44,985.47, March, 1893;
Voucher No. 8, $38,076.11, March, 1893;
Voucher No. 2, $20,584.51, April, 1893;
Voucher No. 4, $30,000.00, May, 1893;
Voucher No. 28, $6,105.69, May, 1893;
Voucher No. 3, $5,968.18, July, 1893;
1443 Voucher No. 4, $34,177.94, July, 1893;
Voucher No. 5, $46,592.39, July, 1893;
Voucher No. 2, $57,013.64, August, 1893;
Voucher No. 1, $97,159.99, September, 1893;
Voucher No. 1, $59,554.84, October, 1893;
Voucher No. 1, $52,452.22, November, 1893;
Voucher No. 2, $85,752.28, December, 1893;
Voucher No. 1, $44,175.02, January, 1894;
Voucher No. 2, $27,057.00, January, 1894;
Voucher No. 4, $75,118.71, February, 1894;
Voucher No. 6, $44,630.22, March, 1894;
Voucher No. 7, $202,481.40, July, 1895;
Voucher No. 10, $481,933.67, September, 1894;
Voucher No. 7, $88,922.63, October, 1894;
Voucher No. 48, $44,303.92, November, 1894;

Voucher No. 11, $38,903.72, December, 1894;
Voucher No. 41, $39,368.67, January, 1895;
Voucher No. 7, $31,659.28, February, 1895;
Voucher No. 10, $25,612.62, March, 1895;
Voucher No. 30, $63,656.50, April, 1895;
Voucher No. 22, $19,860.08, May, 1895;
and those indicated and designated by the following vouchers (and the entries therein and endorsements thereon) submitted by the said Captain Carter with his accounts and marked 'Appropriation for improving Jekyl creek, Georgia':
Voucher No. 2, $3,309.40, June, 1893;
Voucher No. 1, $3,595.38, July, 1893;
and the one indicated and designated by the following voucher (and the entries therein and endorsements thereon) submitted by the said Captain Carter with his accounts and marked 'Appropriation for improving waterway between Savannah, Georgia, and Ferdinanda, Florida, applied to that work at Jekyl creek, Georgia':
Voucher No. 1, $14,591.00, July, 1893;
and those indicated and designated by the following vouchers (and the entries therein and endorsements thereon) submitted by the said Captain Carter with his accounts and marked 'Appropriation for improving Cumberland sound, Georgia':
Voucher No. 13, $874.73, December, 1894;
1444 Voucher No. 42, $9,845.35, January, 1895;
Voucher No. 8, $17,800.50, February, 1895;
and those indicated and designated by the following vouchers (and the entries therein and endorsements thereon) submitted by the said Captain Carter with his accounts and marked 'Appropriation for improving Cumberland sound, Georgia and Florida':
Voucher No. 9, $21,287.65, March, 1895;
Voucher No. 29, $29,659.82, April, 1895;
Voucher No. 23, $32,059.92, May, 1895;
and the one indicated and designated by the following voucher (and the entries therein and endorsements thereon) submitted by the said Captain Carter with his accounts and marked 'Appropriation for improving harbor at Darien, Georgia':
Voucher No. 16, $17,728.81, June, 1895;
and the one indicated and designated by the following voucher (and the entries therein and endorsements thereon) submitted by the said Captain Carter with his accounts and marked 'Appropriation for improving harbor at Darien, Georgia. Improving Altahama river, Georgia. Improving waterway between Savannah, Georgia, and Ferdinanda, Florida. Improving Jekyl creek, Georgia':
Voucher No. 14, $27,861.32, July, 1895;
the said Captain Carter causing each of the said payments to be made in or about the month named in the above description of the voucher relating to it, by drawing and delivering a check as such officer in charge of river and harbor improvements by which he ordered and directed that the amount indicated be paid out of the moneys of the United States then under his control as such officer."

To which charges and specifications the accused, Captain Oberlin M. Carter, Corps of Engineers, pleaded as follows:

Charge I.

To the 1st specification, in bar of trial, the statute of limitation (103d article of war), which plea was sustained by the court.
To the 2d specification, "Not guilty."
To the charge, "Not guilty."

1445 Charge II.

To the 1st, 2d, 3d, 4th, and 5th specifications, in bar of trial, the statute of limitation (103d article of war); which plea was sustained by the court.
To the 6th specification, "Not guilty."
To the 7th specification, "Not guilty."
To the 8th specification, "Not guilty."
To the 9th specification, "Not guilty."
To the 10th specification, "Not guilty."
To the charge, "Not guilty."

Charge III.

To the 1st specification, in bar of trial, the statute of limitation (103d article of war); which plea was sustained by the court.
To the 2d specification, "Not guilty."
To the 3d specification, "Not guilty."
To the 4th specification, "Not guilty."
To the 5th specification, "Not guilty."
To the 6th specification, "Not guilty."
To the 7th specification, "Not guilty."
To the 8th specification, "Not guilty."
To the 9th specification, "Not guilty."
To the 10th specification, "Not guilty."
To the 11th specification, "Not guilty."
To the 12th specification, "Not guilty."
To the 13th, 14th, 15th, 16th, 17th, 18th, 19th, 20th, and 21st specifications, in bar of trial the statute of limitation (103d article of war); which plea was sustained by the court.
To the 22d specification, "Not guilty."
To the 23d specification, "Not guilty."
To the charge, "Not guilty."

Charge IV.

To the 1st specification, "Not guilty."
To the 2d specification, in bar of trial, the statute of limitation (103d article of war); which plea was sustained by the court.
To the charge, "Not guilty."

*Finding.*

And the court, after due deliberation, finds the accused, Captain Oberlin M. Carter, Corps of Engineers, as follows:

1446 Charge I.

Of the 2d specification, "Guilty, except the words 'and other material' and interpolating the word 'and' between the words 'mattresses' and 'stone' wherever those words occur in the specification; of the excepted words not guilty and of the interpolated words guilty."

Of the charge, "Guilty."

Charge II.

Of the 6th specification, "Guilty, except of the words 'and other material' where they occur the second and third time and interpolating the word 'and' between the words 'mattresses' and 'stone' where they occur the second and third time; of the excepted words not guilty; of the interpolated word guilty."

Of the 7th specification, "Guilty."

Of the 8th specification, "Guilty."

Of the 9th specification, "Guilty."

Of the 10th specification, "Guilty."

Of the charge, "Guilty."

Charge III.

Of the 2d specification, "Guilty."

Of the 3d specification, "Guilty."

Of the 4th specification, "Guilty."

Of the 5th specification, "Guilty, except of the words 'the articles have been' and of the excepted words not guilty."

Of the 6th specification, "Guilty."

Of the 7th specification, "Guilty."

Of the 8th specification, "Not guilty."

Of the 9th specification, "Guilty."

Of the 10th specification, "Not guilty."

Of the 11th specification, "Guilty."

Of the 12th specification, "Not guilty."

Of the 22d specification, "Guilty."

Of the 23d specification, "Not guilty."

Of the charge, "Guilty."

Charge IV.

Of the 1st specification, "Guilty."

Of the charge, "Guilty."

1447 *Sentence.*

And the court does therefore sentence the accused, Captain Oberlin M. Carter, Corps of Engineers, United States Army, "to be dismissed from the service of the United States, to suffer a fine of five thousand dollars, to be confined at hard labor at such place as the proper authority may direct for five years, and the crime, punishment, name and place of abode of the accused to be published in the newspapers in and about the station and in the State from which the accused came, or where he usually resides."

The record of the proceedings of the general court-martial in the foregoing case of Captain Oberlin M. Carter, Corps of Engineers, having been submitted to the President, the following are his orders thereon:

The findings of the court-martial in the matter of the foregoing proceedings against Captain Oberlin M. Carter, Corps of Engineers, U. S. Army, are hereby approved as to all except the following:

Charge 2. Specifications seven, eight, nine, and ten.

Charge 3. Specifications three, four, five, six, seven, nine, eleven, and twenty-two, which are disapproved. And the sentence imposed by the court-martial upon the defendant, Oberlin M. Carter, is hereby approved.

ELIHU ROOT,
*Secretary of War.*

EXECUTIVE MANSION,
WASHINGTON, D. C., *September* 29, 1899.

Approved and confirmed.

WILLIAM McKINLEY.

By direction of the Secretary of War, Captain Oberlin M. Carter, Corps of Engineers, ceases to be an officer of the army from this date, and the United States penitentiary, Fort Leavenworth, Kansas, is designated as the place for his confinement, where he will be sent by the commanding general, Department of the East, under proper guard.

By command of Major General Miles:

H. C. CORBIN,
*Adjutant General.*

1448 UNITED STATES OF AMERICA,
WAR DEPARTMENT, WASHINGTON, *October* 30, 1900.

I hereby certify that the document hereto annexed is a correct copy of the original order publishing the result of the trial by general court-martial of Captain Oberlin M. Carter, Corps of Engineers, on file in the Adjutant General's Office.

H. C. CORBIN,
*Adjutant General.*

Be it known that H. C. Corbin, who signed the foregoing certificate, is the Adjutant General of the Army, and that to his attestation as such full faith and credit are and ought to be given.

In witness whereof I have hereunto set my hand and [SEAL.] caused the seal of the War Department to be affixed on this thirtieth day of October, one thousand nine hundred.

ELIHU ROOT,
*Secretary of War.*

Endorsed: No. 7849. Exhibit "A." Filed Nov. 23, 1900. Geo. F. Sharitt, clerk.

1449–1739 EXHIBIT ½ A.

In the Circuit Court of the United States for the District of Kansas, First Division.

OBERLIN M. CARTER, on the Petition of I. STANTON CARTER, Petitioner,
*vs.*
ROBERT W. MCLAUGHRY.

The United States of America to Robert W. McLaughry, warden of the United States penitentiary at Fort Leavenworth, Kansas:

We command you that the body of Oberlin M. Carter, in your custody detained, as it is said, together with the day and cause of his caption and detention, you safely have before the circuit court of the United States for the district of Kansas, first division, at the United States court-room, in the city of Leavenworth, State of Kansas, on the 26th day of October, A. D. 1900, at 10 o'clock a. m. of said day, then and there to do all and singular those things which the said court shall then and there consider of him in this behalf; and have you then and there this writ.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States.

[SEAL.] Attested by the seal of said court, at Leavenworth, Kansas, this 17th day of October, in the year of our Lord one thousand nine hundred.

GEO. F. SHARITT, *Clerk.*

Endorsed: No. 7849. Exhibit ½ A. Filed Nov. 23, 1900. Geo. F. Sharitt, clerk.

1740 & 1741 No. 7849.

EXHIBIT "J."

*Transcript of Record.*

Supreme Court of the United States, October Term, 1899.

OBERLIN M. CARTER, on the Petition of ABRAM J. ROSE, Petitioner,
*against*
BENJAMIN K. ROBERTS. } No. 513.

On petition for a writ of certiorari to the United States circuit court of appeals for the second circuit.

Filed Nov. 23, 1900.

GEO. F. SHARITT, *Clerk.*

1742 & 1743 *Index.*

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1744 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the judges of the circuit court of the United States for the southern district of New York, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court before you, or some of you, between Oberlin M. Carter on the petition of Abram J. Rose for a writ of *habeas corpus* and Capt. Benjamin K. Roberts, respondent, a manifest error hath happened, to the great damage of the said petitioner, as is said and appears by his complaint; we, being willing that such error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the judges of the United States circuit court of appeals for the second circuit, at the city of New York, together with this writ, so that you have the same at the said place, before the judges aforesaid, on the 20th day of November, 1899, that the record and proceedings aforesaid being inspected, the said judges of the
1745 United States circuit court of appeals for the second circuit may cause further to be done therein, to correct that error, what of right and according to the law and custom of the United States ought to be done.

Witness, the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this 23d day of October, in the year of our Lord one thousand eight hundred and ninety-nine, and

of the Independence of the United States the one hundred and twenty-fourth.

[L. S.] JOHN A. SHIELDS,
*Clerk of the Circuit Court of the United States of America for the Southern District of New York, in the Second Circuit.*

The foregoing writ is hereby allowed.
E. HENRY LACOMBE,
*U. S. Circuit Judge.*

UNITED STATES OF AMERICA, *Southern District of New York,* } *ss:*

I, John A. Shields, clerk of the circuit court of the United States of America for the southern district of New York, in the second circuit, by virtue of the foregoing writ of error, and in obedience thereto, do hereby certify that the following pages, numbered from three (3) to seventy-seven (77) inclusive, contain a true and complete transcript of the record and proceedings had in said court in the matter of the petition of Abram J. Rose for a writ of *habeas corpus* for Oberlin M. Carter, relator, as the same remain of record and on file in said office.

In testimony whereof, I have caused the seal of the said court to be hereunto affixed, at the city of New York, in the southern district of New York, in the second circuit, this fourteenth day of November, in the year of our Lord one thousand eight hun-
1746 dred and ninety-nine, and of the Independence of the United States the one hundred and twenty-fourth.

[SEAL.] JOHN A. SHIELDS, *Clerk.*

(Stamp.)

(Endorsed:) The U. S. circuit court of appeals for the second circuit. Oberlin M. Carter, on the petition of Abram J. Rose, plaintiff in error, *vs.* Benjamin K. Roberts, defendant in error. Original writ of error. Kellogg, Rose & Smith, attorneys for plaintiff in error. Due service of a copy of the within writ of error is hereby admitted this 23d day of Oct., 1899. U. S. circuit court. Filed Oct. 23, 1899. John A. Shields, clerk.

To the circuit court of the United States for the southern district of New York:

The petition of Abram J. Rose shows:

First. That your petitioner is the attorney for Oberlin M. Carter, who prior to the 29th day of September, 1899, was an officer duly appointed in the Army of the United States, holding the rank of captain of the Corps of Engineers.

Second. That said Carter is imprisoned and restrained in his liberty in Castle William, Governor's island, in the southern district of New York, in the custody of General Wesley Merritt, commanding the Department of the East, United States Army, and by Capt. Ben-

jamin K. Roberts, capt. 5th artillery, commanding Fort Columbus, N. Y.

Third. That he has been committed and is detained by virtue of a sentence imposed upon him by a general court-martial, con-
1747 vened by the President of the United States, which said sentence is as follows: "And the court does therefore sentence the accused Captain Oberlin M. Carter, Corps of Engineers, United States Army, to be dismissed from the service of the United States, to suffer a fine of five thousand dollars, to be confined at hard labor at such place as the proper authority may direct for five years and the crime, punishment, name and place of abode of the accused to be published in the newspapers in and about the station and the State from which the accused came or where he usually resides."

That said sentence was approved by the Secretary of War and approved and confirmed by the President of the United States on the 29th day of September, 1899.

Fourth. That the cause or pretense of the imprisonment and restraint, according to the best knowledge and belief of the petitioner, is that charges and specification- were preferred against said Oberlin M. Carter, under the articles of war, as contained in the Revised Statutes of the United States, charging the said Oberlin M. Carter with conspiracy in violation of the sixtieth article of war, and in presenting false claims in violation of said sixtieth article of war, and with embezzlement, as defined in section 5488 of the Revised Statutes of the United States in violation of the sixtieth article of war, and with conduct unbecoming an officer and a gentleman, in pursuance of which charges and specifications, proceedings were had before the said general court-martial, convened as aforesaid, which terminated in the sentence above mentioned.

Fifth. That it is provided by article 60 of the articles of war, section 1342 of the Revised Statutes of the United States, that every person who shall have been convicted of the offenses of which
1748 said Carter was found guilty, "shall on conviction thereof, be punished by fine or imprisonment or by such other punishment as a court-martial may adjudge."

Sixth. That in pursuance of said sentence, said Oberlin M. Carter has been dismissed from the service of the United States Army, and the order of dismissal has been duly personally served upon him, as petitioner is informed and believes, and the crime, punishment, name and place of abode of the accused, has been published in the newspapers in and about the station and the State from which the accused came, and where he usually resides, as your petitioner is informed and believes.

Seventh. That having suffered the punishment of dismissal, and the degradation of the publication of the crime and punishment, as imposed by said sentence, the imprisonment and detention of said Oberlin M. Carter is without authority of law, and the further punishment and detention of said Oberlin M. Carter, and the carrying out of said sentence, is contrary to law and the provisions of the Constitution of the United States and is illegal.

Eighth. That notwithstanding the above facts, the said General

Wesley Merritt, Captain Benjamin K. Roberts and persons acting under their orders and authority, are detaining said Oberlin M. Carter in custody and are about to remove him to the military prison at Fort Leavenworth in the State of Kansas to be there confined at hard labor for a period of five years, as imposed by said sentence.

Ninth. That the detention of said Oberlin M. Carter and his proposed removal to Fort Leavenworth, in pursuance of said sentence, is without authority of law, and that any further carrying out of said sentence and the further detention or imprisonment of said Oberlin M. Carter, would be unlawful.

1749 Wherefore, your petitioner prays that a writ of *habeas corpus* may issue out of this court, directed to the said General Wesley Merritt, commanding the Department of the East, and said Captain Benjamin K. Roberts, commanding them to have the body of said Oberlin M. Carter before this honorable court, as shall be directed in the said writ, so that this court may be able to proceed thereon, and do what shall appear to them of right ought to be done.

Dated New York, October 2, 1899.

ABRAM J. ROSE, *Petitioner.*

KELLOGG, ROSE & SMITH,
*Att'ys for Petitioner.*

UNITED STATES OF AMERICA, }
*Southern District of New York,* } *ss:*

Abram J. Rose, being duly sworn, says: That he is the petitioner in this proceeding. That he has read the foregoing petition, and that the same is true to his own knowledge, except as to the matters which are therein stated to be alleged upon information and belief, and that as to those matters he believes it to be true.

ABRAM J. ROSE.

Sworn to before me this — day of October, 1899.

ROB'T LAWRENCE,
[SEAL.] *Notary Public, New York County.*

(Endorsed:) U. S. circuit court, southern dist. of New York. In the matter of the petition of Abram J. Rose for a writ of *habeas corpus* for Oberlin M. Carter. Petition. Kellogg, Rose & Smith, att'ys for petitioner, 120 Broadway, New York. U. S. circuit court. Filed Oct. 2, 1899. John A. Shields, clerk.

1750 The President of the United States of America to General Wesley Merritt, general commanding the Department of
[L. S.] the East of the United States Army, Governor's island, New York harbor, and Captain Benjamin K. Roberts, captain Fifth artillery, commanding Fort Columbus, New York:

We command you that you have the body of Oberlin M. Carter by you imprisoned and detained, as it is said, together with the

time and cause of such imprisonment and detention by whatsoever name the said Oberlin M. Carter shall be called or charged before the circuit court of the United States for the southern district of New York, at the court-house of the said court, in the post-office building in the said city of New York, on the 4th day of October, 1899, at 11 o'clock in the forenoon of that day, to do and receive what shall then and there be considered concerning the said Oberlin M. Carter, and have you then and there this writ.

Witness Hon. Melville W. Fuller, Chief Justice of the Supreme Court of the United States, at the city of New York, the 2d day of October, in the year of our Lord one thousand eight hundred and ninety-nine.

JOHN A. SHIELDS,
*Clerk Circuit Court of the United States,*
*Southern District of New York.*

(Endorsed:) U. S. circuit court, southern district of New York. In the matter of the petition of Oberlin M. Carter for a writ of *habeas corpus*. Writ. Kellogg, Rose & Smith, att'ys for petitioner, 120 Broadway, New York. Within writ allowed. N. Y., October 2d, 1899. E. Henry Lacombe, U. S. circuit judge. Prisoner 1751 remanded to the custody from which he is produced, to be there detained until the questions raised shall be finally decided by this court and decision endorsed thereon. Oct. 4, 1899. E. Henry Lacombe, U. S. circuit judge. The writ being discharged and appeal taken, prisoner is remanded to the custody from which he is produced in conformity to rule 34. Oct. 23, 1899. E. Henry Lacombe, U. S. circuit judge. U. S. circuit court. Filed Oct. 23, 1899. John A. Shields, clerk.

To the honorable the circuit court of the United States, southern district of New York:

The undersigned, captain of the 5th United States artillery, commanding Fort Columbus, New York, respectfully makes return to the writ, a copy of which is hereto annexed marked "A," and says that he has the custody of the body of Oberlin M. Carter, as the commanding officer of said fort, and that he detains the said Carter, by virtue of instructions from his commanding officer, Major General W. Merritt, commanding the Department of the East; that the said Carter is under sentence of a general court-martial, sentenced to be imprisoned at Fort Leavenworth, Kansas, for five years, and that the said Carter is now in custody, as aforesaid, while awaiting transportation to the aforesaid fort; and your respondent says he is acting in his capacity as such officer by virtue of general orders No. 172, Headquarters of the Army, Adjutant General's Office, Washington, D. C., September 29, 1899, the same containing the charges and specifications under and by virtue of which the said Carter was tried; the findings of the general court-martial; the sentence of the said Carter by the same; the approval of the findings of said court-martial with the exceptions stated in such orders by the Secretary of

War; the approval of the sentence by the latter, and the
1752 approval and confirmation by the President; and your respondent respectfully calls attention to said general orders, a duly authenticated copy of which, marked B, is filed herewith; and the attention of the court is respectfully invited thereto, the contention of respondent being that the said Carter has been lawfully convicted and sentenced by the said general court-martial, which had jurisdiction of the person of said Carter, and of the various offenses for which he was tried.

In obedience to the said writ of *habeas corpus* the respondent herewith produces before the court the body of the said Oberlin M. Carter, but for the reasons set forth prays this honorable court to dismiss the said writ.

BENJAMIN K. ROBERTS,
*Captain Fifth U. S. Artillery, Commanding*
*Fort Columbus, New York Harbor.*

New York city, N. Y., October 4, 1899.

(Copy.)

"A."

The President of the United States of America to General Wesley Merritt, general commanding the Department of the East of the United States Army, Governor's island, New York harbor,
[L. S.] and Captain Benjamin K. Roberts, captain Fifth artillery, commanding Fort Columbus, New York:

We command you that you have the body of Oberlin M. Carter by you imprisoned and detained, as it is said, together
1753–1795 with the time and cause of such imprisonment and detention by whatsoever name the said Oberlin M. Carter shall be called or charged before the circuit court of the United States for the southern district of New York, at the court-house of the said court, in the post-office building, in the said city of New York, on the 4th day of October, 1899, at 11 o'clock in the forenoon of that day, to do and receive what shall then and there be considered concerning the said Oberlin M. Carter, and have you then and there this writ.

Witness Hon. Melville W. Fuller, Chief Justice of the Supreme Court of the United States, at the city of New York, the 2d day of October, in the year of our Lord one thousand eight hundred and ninety-nine.

JOHN A. SHIELDS,
*Clerk Circuit Court of the United States,*
*Southern District of New York.*

(Endorsed:) U. S. circuit court, southern district of New York. In the matter of the petition of Oberlin M. Carter for a writ of *habeas corpus*. Writ. Kellogg, Rose & Smith, att'ys for petitioner, 120 B'way, New York. Within writ allowed. N. Y., Oct. 2, 1899. E. Henry Lacombe, U. S. circuit court judge. U. S. circuit court. Filed Oct. 20, 1899. John A. Shields, clerk.

1796 United States Circuit Court, Southern District of New York.

In the Matter of the Application of ABRAM J. ROSE for a writ of *Habeas Corpus* for the Discharge of Oberlin M. Carter.

Now comes the petitioner for traverse to the return to the writ of *habeas corpus* made herein and says that said Carter has already suffered the punishment of dismissal from the army and the further punishment of publication of the crime and punishment as imposed by the sentence of the court-martial referred to in said return and denies that he is lawfully in custody of the respondent under a lawful conviction and sentence of said court-martial as alleged in said return.

1797 That the sentence of said court-martial as stated in said return was in excess of its powers and jurisdiction and said Carter is held by said respondent without authority of law.

Wherefore petitioner asks that he be discharged.

ABRAM J. ROSE, *Petitioner.*

SOUTHERN DISTRICT OF NEW YORK, *ss:*

Abram J. Rose, being duly sworn, says: That he has read the foregoing return and that the same is true.

ABRAM J. ROSE.

Sworn to before me this 4th October, 1899.

E. HENRY LACOMBE,
*U. S. Circuit Judge.*

(Endorsed:) U. S. circuit court. Filed Oct. 20, 1899. John A. Shields, clerk.

United States Circuit Court, Southern District of New York.

In the Matter of the Application of ABRAM J. ROSE for the Discharge of Oberlin M. Carter under a Writ of *Habeas Corpus.*

1798 It is hereby stipulated and agreed, that on the 5th day of October, 1899, the said Oberlin M. Carter, by Abram J. Rose, his attorney, tendered to the assistant treasurer of the United States, at the subtreasury in the city of New York, the sum of five thousand dollars, in gold certificates, in payment of the fine for that amount imposed upon the said Carter by the sentence of the court-martial. That such assistant treasurer received the said five thousand dollars and gave a receipt therefor, a copy of which is hereto annexed. That at the time of giving such receipt, it was stated to said Rose that the money would be placed in account 5, to the credit of the Secretary of the Treasury, and if such disposition was not satisfactory, said Rose would be notified. That no notice in that respect has been given said Rose.

It is further stipulated that on the 10th day of October, 1899, said Rose forwarded a duplicate of said receipt to the Secretary of War

by registered letter, and that the same was received by him on or about the 11th day of October, 1899.

It is further stipulated that the facts set forth in the preceding stipulation may be taken, held and considered as part of the petition and return herein, so as to be a part of the record before the court for its consideration in the determination of the questions submitted to it.

New York, 16th October, 1899.

KELLOGG, ROSE & SMITH,
*Att'ys for Petitioner.*
HENRY L. BURNETT, *U. S. Att'y.*

"No. 243.

OFFICE OF ASSISTANT TREASURER U. S.,
NEW YORK, *Oct.* 5, 1899.

I certify that Abram J. Rose, attorney for Oberlin M. Carter, this day deposited to the credit of the Secretary of the Treasury,
1799 special-deposit account No. 5, five thousand dollars, on account of description, see back, for which I have signed triplicate receipts.

$5,000.

C. N. JORDAN,
*Assistant Treasurer U. S.*"

(Indorsement on back:) "On account of payment of fine imposed on said Carter by sentence of general court-martial as approved by Secretary of War and the President. This deposit subject to approval of the Secretary of the Treasury."

(Endorsed:) U. S. circuit court, southern district of New York. In the matter of the application of Abram J. Rose for the discharge of Oberlin M. Carter under a writ of *habeas corpus*. Stipulation as to payment of fine. Kellogg, Rose & Smith, att'ys for petitioner, 120 Broadway, New York. U. S. circuit court. Filed Oct. 20, 1899. John A. Shields, clerk.

United States Circuit Court, Southern District of New York.

In the Matter of a *Habeas Corpus* on the Relation of OBERLIN M. CARTER.

LACOMBE, *Circuit Judge:*

The sentence of the court-martial duly approved and confirmed, reads "to be dismissed from the service of the United States, to suffer a fine of five thousand dollars, to be confined at hard labor
1800 at such place as the proper authority may direct for five years, and the crime, punishment, name, and place of abode of the accused to be published in and about the station, and in the State from which the accused came, or where he usually resides." The contention of the relator is that, conceding that the court-martial had jurisdiction of the person of the accused, and of the offenses charged, and conceding further the regularity of its proceedings

and the propriety of its findings, it was without power to impose the four separate punishments of dismissal, fine, imprisonment and degradation (special publication of sentence) although it might have imposed either one of them. When application was made for the writ it appeared that the first punishment, dismissal from the service of the United States, and the fourth publication of sentence, had been carried out; and the relator contended that having thus paid a penalty which the court had power to inflict, he could not be held to submit to another penalty which the court had no power to add to the one already by it selected. Since the return was made the relator has also paid the fine, and although that fact does not appear upon the face of the original papers, it has been discussed in the briefs of both sides and is now embodied in a stipulation, thus completing the case.

If the relator's premises be sound, viz., that punishments have been imposed in the aggregate, when the statute authorized their imposition only in the alternative, his conclusion is supported by high authority, *Ex parte* Lang, 85 U. S., 163. In that case it was held that when a court has imposed fine and imprisonment, where the statute only conferred power to punish by fine or imprisonment, and the fine has been paid, and the judgment of the court thus executed so as to be a full satisfaction of one of the alternative penalties of the law, the power of the court as to that offense is at an end. The important question in the case, therefore, is
1801 whether under the statutes of the United States the court-martial had the power, under its findings, to impose a sentence inflicting these four penalties.

The relator was tried upon four separate charges, namely:

I. Conspiring to defraud the United States, in violation of the 60th article of war.

II. Causing false and fraudulent claims to be made against the United States, in violation of the 60th article of war.

III. Conduct unbecoming an officer and a gentleman, in violation of the 61st article of war.

IV. Embezzlement, as defined in section 5488, Revised Statutes of the United States, in violation of the 62d article of war.

He was found guilty of each of the four charges.

The 61st article of war provides that "any officer who shall be convicted of conduct unbecoming an officer and a gentleman shall be dismissed from the service." This is a provision only independent of the other definitions of offenses in the statute; the same course of conduct may constitute an offense elsewhere provided for and also may warrant a finding of guilty under the 61st. The 100th article of war provides that "when an officer is dismissed from the service for cowardice or fraud, the sentence shall further direct that the crime, punishment, name and place of abode of the delinquent shall be published in the newspapers," &c. This is a specific statutory penalty which must inevitably follow the conviction, the court-martial being given no option as to its infliction. It is plainly additional to the punishment imposed for the "cowardice or fraud" *per se*. It is understood that the relator does not now

contend that his dismissal and the publication of it is sufficient ground for his discharge. What the relator does contend is
1802 that, having paid the fine he is entitled to invoke the principle established in the Lange case, on the theory that the court-martial had authority under the 60th article to impose only a fine or imprisonment, not to impose both. It is manifest that he is in no position to press this argument unless he can dispose of the conviction and sentence under the fourth charge. That charge is, "embezzlement, as defined by sec. 5488 Revised Statutes of the United States, in violation of the 62d article of war."

The 62d article of war reads as follows:

"Art. 62. All crimes not capital, and all disorders and neglects, which officers and soldiers may be guilty of, to prejudice of good order and military discipline, though not mentioned in the foregoing articles of war, are to be taken cognizance of by a general, or a regimental, garrison, or field-officers court-martial according to the nature and degree of the offense, and punished at the discretion of such court."

The language, the general structure and the specific provisions of this article indicate that it is a catch-all clause intended to cover offenses not already specifically provided for. The framers of the article wisely foresaw that there might be many crimes, disorders and neglects, which could not be classified under any enumeration already contained in the articles, and which, if a court-martial were left without power to deal with them, might operate to the prejudice of good order and military discipline. Therefore, having "mentioned" various offenses which might be cognizable by a court-martial and punished as prescribed, the framers of the articles further provided that "all" offenses of certain specified characters, "though not mentioned" might also be taken cognizance of by a court-martial and punished at its discretion. It would seem to follow that where an offense is found to be specifically provided for in
1803 any of the articles prior to the 62d, the grant of jurisdiction to try and punish such offense is conferred by the particular article which mentions it, and not by the general language of the 62d article. This proposition has commended itself to text writers (Davis Military Law, pp. 70–71; Winthrop's Military Law, 2d edition, pp. 1126–1127), and is in accord with general principles of statutory construction, U. S. *v.* Tynen, 11 Wall., 88; U. S. *v.* Auffmordt, 122 U. S., 197.

Section 5488 of the Revised Statutes reads as follows:

"SEC. 5488. Every disbursing officer of the United States who deposits any money intrusted to him in any place or in any manner, except as authorized by law, or converts to his own use in any way whatever, or loans with or without interest, or for any purpose not prescribed by law withdraws from the treasurer or any assistant treasurer, or any authorized depository, or for any purpose not prescribed by law, transfers or applies any portion of the public money intrusted to him, is, in every such act, deemed guilty of an embezzlement of the money so deposited, converted, loaned, withdrawn, transferred or applied; and shall be punished by imprisonment with

hard labor for a term not less than one year nor more than ten years, or by a fine of not more than the amount embezzled or less than one thousand dollars, or by both such fine and imprisonment (see secs. 3620, 5497)."

The particular clause which is germane to the facts in the cause at bar, as appears from the findings of the court-martial, which sustain the fourth charge upon the first specification alone, is the one reading, "Every disbursing officer of the United States who * * * for any purpose not prescribed by law transfers or applies any portion of the public money intrusted to him is * * * deemed guilty of an embezzlement." Obviously this is a crime, made so by this very section, and, unless already mentioned in the fore-
1804 going articles, would come within the provisions of the 62d.

The 60th article reads as follows (the numbers of the paragraphs being inserted here for convenience of reference):

"Article 60. Any person in the military service of the United States

1. Who makes or causes to be made any claim against the United States, or any officer thereof, knowing such claim to be false or fraudulent; or

2. Who presents or causes to be presented to any person in the civil or military service thereof, for approval or payment, any claim against the United States or any officer thereof, knowing such claim to be false or fraudulent; or

3. Who enters into any agreement or conspiracy to defraud the United States by obtaining, or aiding others to obtain, the allowance or payment of any false or fraudulent claim; or

4. Who, for the purpose of obtaining, or aiding others to obtain, the approval, allowance or payment of any claim against the United States or against any officer thereof, makes or uses, or procures or advises the making or use of, any writing, or other paper, knowing the same to contain any false or fraudulent statement; or

5. Who, for the purpose of obtaining, or aiding others to obtain, the approval, allowance or payment of any claim against the United States or any officer thereof, makes or procures or advises the making of, any oath to any fact or to any writing or other paper, knowing such oath to be false; or

6. Who, for the purpose of obtaining, or aiding others to obtain, the approval, allowance or payment of any claim against the United States or any officer thereof, forges or counterfeits, or procures
1805 or advises the forging or counterfeiting of, any signature upon any writing or other paper, or uses, or procures or advises the use of, any such signature, knowing the same to be forged or counterfeited; or

7. Who, having charge, possession, custody or control of any money or other property of the United States, furnished or intended for the military service thereof, knowingly delivers, or causes to be delivered, to any persons having authority to receive the same, any amount thereof less than that for which he receives a certificate or receipt; or

8. Who, being authorized to make or deliver any paper certifying

the receipt of any property of the United States, furnished or intended for the military service thereof, makes, or delivers to any person, such writing, without having full knowledge of the truth of the statements therein contained, and with intent to defraud the United States; or

9. Who steals, embezzles, knowingly and wilfully misappropriates, applies to his own use or benefit, or wrongfully or knowingly sells or disposes of any ordnance, arms, equipments, ammunition, clothing, subsistence stores, money or other property of the United States, furnished or intended for the military service thereof; or

10. Who knowingly purchases, or receives in pledge for any obligation or indebtedness, from any soldier, officer or other person who is a part of or employed in said forces or service, any ordnance, arms, equipments, ammunition, clothing, subsistence stores, or other property of the United States, such soldier, officer or other person not having lawful right to sell or pledge the same.

Shall, on conviction thereof, be punished by fine or imprisonment, or by such other punishment as a court-martial may adjudge. And if any person being guilty of any of the offenses aforesaid,
1806 while in the military service of the United States, receives his discharge or is dismissed from the service, he shall continue to be liable to be arrested and held for trial and sentence by a court-martial in the same manner and to the same extent as if he had not received such discharge nor been dismissed."

When the 9th subdivision of the 60th article is compared with the above-quoted subdivision of section 5488 it will be observed that, save in one particular, the former is broad enough to contain the latter. A person who "for any purpose not prescribed by law transfers or applies any portion of the public money entrusted to him" certainly "misappropriates" or "wrongfully disposes" of the same. But sec. 5488 covers such improper disposition of any public money, while the 9th subdivision of article 60 relates only to "money * * * of the United States furnished or intended for the military service thereof." It appears from the specification that the money was part of the sum appropriated by the act of June 3, 1896, chapter 314, 29 Stat. at Large, pages 202, 208, which is one of the usual "river and harbor" acts. It enacts that the sums thereby appropriated are to be expended "for the construction, repair and preservation of the public works hereinafter named." The public works enumerated are devised and carried out to facilitate commerce, not for military purposes, and the only argument that is advanced to sustain the proposition contended for is that the Secretary of War is charged with the duty of making surveys of rivers and harbors, reporting as to what improvements therein shall best subserve the public interests and making contracts for the work, and that officers of the engineer corps are employed in taking charge of the execution of such contracts, and disbursing the money appropriated therefor. But although the trained skill of army officers is thus availed of to superintend the disbursement of money appropriated for the improvement of natural facilities for commercial in-
1807 tercourse, thus saving the expense of engaging such skill

elsewhere, it by no means follows that money so appropriated is "furnished or intended for the military service of the United States." The appropriation act for the fiscal year ending June 30, 1898—which contains a further appropriation for Savannah harbor—also contains under the heading "War Department" various items, to be expended under direction of the Secretary of War acting through officers of the army, and dealing with such public works as the care of the "Smithsonian grounds," the "laying asphalt walks around Judiciary square in the city of Washington," the "lighting of public grounds," and the "ordinary care of greenhouses and nursery at the Executive mansion." Surely these appropriations are not furnished or intended for "the military service," and appropriations for rivers and harbor improvements, are of the same class. It would seem to be a very strained construction of the act, which should hold that because the disbursing officer is himself in the military service of the United States, the money which he disburses must be held to have been "furnished or intended" for the military service, wholly irrespective of the purpose for which it is appropriated. It follows, therefore, that a court-martial would be without power to convict an officer of the army, under the 60th article, for knowingly or willfully misappropriating money of the United States, appropriated for—"furnished or intended for"—the improvement of rivers and harbors. Such an offense, however, falls clearly within the language of section 5488, and is therefore covered by the 62d article.

It must be held, therefore, that the court-martial, having found the relator guilty of the first specification under the fourth charge, and of that charge, has statutory authority under article 62 and section 5488, to impose a penalty of both fine and imprisonment. This conclusion leads to a dismissal of the writ. Counsel may attend at the opening of court on Monday at 10.30 a. m., when the order
1808 may be settled and signed, and in the event of an appeal being taken, the proper instructions upon remand, in conformity to the rules of the Supreme Court, may be given.

October 20th.

(Endorsed:) Circuit court of the United States for the southern district of New York. In the matter of a *habeas corpus* on the relation of Oberlin M. Carter. Opinion. Lacombe, C. J. U. S. circuit court. Filed Oct. 20, 1899. John A. Shields, clerk.

United States Circuit Court for the Southern District of New York.

In the Matter of the Petition of ABRAM J. ROSE for a Writ of *Habeas Corpus*.

And now comes the petitioner by Kellogg, Rose & Smith, his attorneys, in connection with the petition of appeal from the order entered October 23, 1899, dismissing the writ of *habeas corpus* herein, and directing that Oberlin M. Carter be returned to the custody from which he was taken for the purpose of suffering the punish-

ment imposed by the sentence of a general court-martial, convened by the President of the United States, in pursuance of which general orders No. 172 of the headquarters of the army were issued, and makes and files the following assignments of error:

The court erred in holding,

1st. That the said court-martial had jurisdiction to render the sentence imposed.

1809 2d. That the said Oberlin M. Carter was lawfully restrained of his liberty in and by virtue of the said sentence.

3d. That the said Oberlin M. Carter was not restrained in his liberty without due process of law, as required by the Constitution of the United States, and that he was not so detained contrary to the provisions of the said Constitution and the laws of the United States.

4th. That said general orders No. 172, headquarters of the army, were sufficient and lawful authority for the imprisonment and detention of the said Oberlin M. Carter in custody.

5th. That charge IV of the charges and specifications preferred against said Oberlin M. Carter, sufficiently charged an offense under the 62d article of war and did not charge an offense, if at all, under the 60th article of war.

6th. That said Oberlin M. Carter was amenable to further punishment under the sentence imposed by the court-martial after he had been dismissed from the military service, and the order of his dismissal personally served upon him.

By reason whereof, the petitioner prays that the said order directing that Oberlin M. Carter be remanded to the custody of Captain Benjamin K. Robersts, captain Fifth artillery, at Fort Columbus, be reviewed, and that said Oberlin M. Carter be discharged from custody.

ABRAM ROSE, *Petitioner.*

(Endorsed:) U. S. circuit court, southern district of New York. In the matter of the application of O. M. Carter. Assignment of errors. Kellogg, Rose & Smith, att'ys for petitioner, 120 1810 Broadway, New York. A copy of the within paper has been this day received at this office, Oct. 23, 1899. Henry L. Burnett, U. S. attorney. U. S. circuit court. Filed Oct. 23, 1899. John A. Shields, clerk.

United States Circuit Court, Southern District of New York.

In the Matter of the Petition of ABRAM J. ROSE for a Writ of *Habeas Corpus* for Oberlin M. Carter.

To the honorable the judges of the circuit court of the United States for the second circuit in and for the southern district of New York:

The petition of Abram J. Rose respectfully shows:

First. That by virtue of general order, No. 172, headquarters of

the army, Adjutant General's Office, Oberlin M. Carter has been committed and is detained by virtue of a sentence imposed upon him by a general court-martial, convened by the President of the United States, which said sentence is as follows:

"And the court does, therefore, sentence the accused, Captain Oberlin M. Carter, Corps of Engineers, United States Army, to be dismissed from the service of the United States, to suffer a fine of five thousand dollars, to be confined at hard labor at such
1811 place as the proper authority may direct for five years and the crime, punishment, name and place of abode of the accused to be published in the newspapers in and about the station and the State from which the accused came or where he usually resides, and by virtue of said order No. 172, said Oberlin M. Carter was imprisoned and is restrained in his liberty in the custody of Captain Benjamin K. Roberts in Castle William, Governor's island, in the southern district of New York, in the custody of Captain Benjamin K. Roberts, captain Fifth artillery commanding Fort Columbus, New York."

Second. That the cause or pretense of the imprisonment and restraint according to the best knowledge and belief of the petitioner, is that charges and specifications were preferred against said Oberlin M. Carter under the articles of war, as contained in the Revised Statutes of the United States, charging the accused with conspiracy in violation of the 60th article of war and in presenting false claims in violation of said 60th article of war and with embezzlement, as defined in section 5488 of the Revised Statutes of the United States purporting to be in violation of the 62d article of war and with conduct unbecoming an officer and a gentleman, in violation of the 61st article of war, in pursuance of which charges and specifications, proceedings were had before the said general court-martial convened as aforesaid, which terminated in the sentence above mentioned.

Third. That thereafter your petitioner applied for and obtained from this court a writ of *habeas corpus* for the discharge of the said Oberlin M. Carter on the ground that the court had no jurisdiction to render the sentence imposed and the imprisonment and detention of said Oberlin M. Carter was without authority of law, and contrary to the provisions of the Consitution of the United States
and was illegal.
1812 That after the hearing by the court, an order was entered herein as of the 23d day of October, 1899, dismissing the writ herein and directing that said Oberlin M. Carter be remanded to the custody from which he was taken.

Wherefore your petitioner, feeling himself aggrieved by said order, appeals therefrom to the circuit court of appeals of the United States in and for the second circuit, and prays that this appeal may be allowed, and that a transcript of said order and the return of said Benjamin K. Roberts, captain Fifth artillery, commanding Fort Columbus, New York, to said writ and the traverse of this petitioner

thereto, may be transmitted to the said circuit court of appeals for review therein.

Dated New York, October 23, 1899.

ABRAM J. ROSE,
KELLOGG, ROSE & SMITH,
*Att'ys for Petitioner.*

ABRAM J. ROSE, *Of Counsel.*

Petition of appeal allowed.

E. HENRY LACOMBE,
*U. S. Circuit Judge.*

(Endorsed:) U. S. circuit court, south. dist. of N. Y. In the matter of the application of O. M. Carter. Petition for appeal. Kellogg, Rose & Smith, att'ys for petitioner, 120 Broadway, New York. A copy of the within paper has been this day received at this office. Oct. 23, 1899. Henry L. Burnett, U. S. att'y. U. S. circuit court. Filed Oct. 23, 1899. John A. Shields, clerk.

1813 United States Circuit Court, Southern District of New York.

In the Matter of the Petition of ABRAM J. ROSE for a Writ of *Habeas Corpus* for Oberlin M. Carter.

Know all men by these presents that we, Abram J. Rose, as principal, and Fidelity and Deposit Company of Maryland, as surety, are held and firmly bound unto the United States in the full and just sum of two hundred and fifty ($250) dollars, to be paid to the said United States, to which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally by these presents.

Sealed with our seals and dated this 23d day of October, 1899.

Whereas, lately at a circuit court of the United States for the southern district of New York, in a proceeding therein pending, an order was entered directing the return of Oberlin M. Carter to the custody of Captain Benjamin K. Roberts, captain Fifth artillery, commanding Fort Columbus, New York, for the purpose of serving the sentence imposed by a general court-martial convened by the President of the United States, in pursuance of which general order No. 172, was issued for the punishment of said Oberlin M. Carter, as directed by said sentence, and the said Abram J. Rose having obtained an appeal and filed copy thereof in the clerk's office of the said court to review said order:

1814 Now the condition of the above obligation is such, that if the said Abram J. Rose shall prosecute said appeal to effect, and shall answer all costs if he shall fail to make the said appeal good, then the above obligation to be void, else to remain in full force and effect.

ABRAM J. ROSE. [SEAL.]
FIDELITY AND DEPOSIT COMPANY OF MARYLAND, [SEAL.]
By HENRY B. PLATT, *Vice-President.*
Attest: JOHN W. WOOTEN, *Attorney.*

(Stamp.)

Sealed and delivered and taken and acknowledged, this 23d day of October, 1899.

ROBT LAWRENCE,
*Notary Public, N. Y. Co.*

STATE OF NEW YORK, }
*County of New York,* } *ss.:*

On the 23d day of October, in the year 1899, before me personally came Henry B. Platt, to me known, who, being by me duly sworn, did depose and say: That he resided in the city of New York; that he was the vice-president of the Fidelity and Deposit Company of Maryland, the corporation described in, and which executed the within instrument; that he knew the seal of said corporation; that the seal affixed to said instrument was such corporate seal; that it was so affixed by order of the board of directors of said corporation, and that he signed his name thereto by like order; and
1815 that the liabilities of said company do not exceed its assets as ascertained in the manner provided in section 3 of chapter 720 of the Session Laws of the State of New York for the year 1893. And the said Henry B. Platt further said, that he was acquainted with John W. Wooten, and knew him to be the attorney of said company; that the signature of the said John W. Wooten, subscribed to the within instrument, was in the genuine handwriting of said John W. Wooten, and was subscribed thereto by like order of the board of directors, and in the presence of him, the said Henry B. Platt.

[SEAL.]

ERNEST L. HICKS,
*Notary Public, New York County.*

At a regular meeting of the board of directors of the Fidelity and Deposit Company of Maryland, held at the office of the company, in the city of Baltimore, State of Maryland, on the first day of June, 1898, at which a quorum of said directors, duly authorized to act in the premises, on motion it was unanimously

"Resolved, That in pursuance of section eight hundred and eleven of the Code of Civil Procedure of the State of New York, Henry B. Platt, vice-president, or John W. Wooten, attorney, or Frank H. Platt, Theodore F. Wood, Edward T. Platt, Joseph A. Flynn, and Hugh M. Allwood, attorneys-in-fact of this company in the State of New York, be, and each of them is, hereby authorized and empowered to sign, execute and deliver any and all bonds or undertakings for or on behalf of this company, and to attach thereto the seal of the corporation, the same to be attested by the said John W. Wooten, attorney of the company, or by either one of the other persons above named, as occasion may require."

1816 COUNTY OF NEW YORK, *ss.:*

I, John W. Wooten, attorney of the Fidelity and Deposit Company of Maryland, have compared the foregoing resolution with the original thereof, as recorded in the minute book of said company, and do hereby certify that the same is a true and correct transcript there-

from and of the whole of the said original resolution. Given under my hand and seal of the company, at the city of New York, this 23d day of October, 1899.

[SEAL.] JOHN W. WOOTEN, *Attorney.*

Fidelity and Deposit Company of Maryland.

*Statement, March* 30, 1899.

Resources.

| | | |
|---|---|---|
| Real estate | $600,000 00 | |
| Stocks and bonds | 1,541,527 00 | |
| Railroad bonds | 1,171,077 50 | |
| Net premiums due | 153,824 13 | |
| Cash in bank, &c | 630,664 37 | |
| | | $4,097,093 20 |

Liabilities.

| | | |
|---|---|---|
| Capital stock | $1,500,000 00 | |
| Surplus and undivided profits | 2,012,902 22 | |
| Premium reserve | 552,104 50 | |
| Claims in process of adjustment | 7,020 72 | |
| Claims reported. Proof not filed | 25,065 76 | |
| | | $4,097,093 20 |

1817 STATE OF NEW YORK, } ss:
*County of New York,* }

John W. Wooten, being duly sworn, says: That he is the attorney of the Fidelity and Deposit Company of Maryland; that the foregoing is a true and correct statement of the financial condition of said company, as of March 30, 1899, to the best of his knowledge and belief, and that the financial condition of said company is as favorable as it was when such statement was made.

JOHN W. WOOTEN.

Subscribed and sworn to before me this 23d day of October, 1899.

ERNEST L. HICKS,
*Notary Public, New York County.*

[SEAL.]

Whereas, the Fidelity and Deposit Co. of Maryland, a corporation duly incorporated under the laws of the State of Maryland, has appointed an agent as required by section 2 of the act of August 13, 1894, entitled "An act relative to recognizances, stipulations, bonds, and undertakings, and to allow certain corporations to be accepted as surety thereon;" and has deposited with me its charter or articles of incorporation and the statement required by section 3 of said act; and has satisfied me that it has authority under said charter to do business provided for in said act; that it has a paid-up capital of not less than $250,000 in cash or its equivalent, and that it is able to keep and perform its contracts:

Now, therefore, the requirements of said act preliminary to the

transaction of business thereunder in the above and all other particulars having been fully complied with, the said Fidelity
1818 and Deposit Co. of Maryland is hereby granted authority to do business under said act.

Department of Justice, Washington, D. C., August 28, 1894.

RICHARD OLNEY,
[SEAL.] *Attorney General.*

DEPARTMENT OF JUSTICE,
WASHINGTON, D. C., *Sept.* 16, 1899.

The annexed is a true copy of an original authorization to do business, issued by the Attorney General under the act of Congress approved August 13, 1894.

Witness my hand and the seal of the department.

CECIL CLAY,
[SEAL.] *Chief Clerk.*

(Stamp.)

(Endorsed:) United States circuit court, so. dist. of New York. In the matter of the application of Oberlin M. Carter. Bond. Kellogg, Rose & Smith, att'ys for petitioner, 120 Broadway, New York. The within bond approved as to form, sufficiency of surety, and manner of execution. E. Henry Lacombe, U. S. circuit judge. U. S. circuit court. Filed Oct. 23, 1899. John A. Shields, clerk.

UNITED STATES OF AMERICA, *ss:*

To the United States of America and Captain Benjamin K. Roberts, captain Fifth artillery, commanding Fort Columbus, New York:

You are hereby cited and admonished to be and appear before the United States circuit court of appeals for the second circuit, at the city of New York, on the 20th day of November, 1899, pursuant to an appeal on the part of Abram J. Rose, filed in the clerk's
1819 office of the circuit court of the United States for the southern district of New York in a certain suit or proceeding, entitled "In the matter of the petition of Abram J. Rose for a writ of *habeas corpus*" to show cause, if any there be, why the decision of the United States circuit court, in the said appeal mentioned, should not be reversed, modified or corrected and speedy justice should not be done in that behalf.

Given under my hand at the city of New York, in the southern district of New York, on the 23d day of October, 1899.

E. HENRY LACOMBE,
*Judge of the United States Circuit Court of Appeals for the Second Circuit.*

KELLOGG, ROSE & SMITH,
*Att'ys for Appellant.*

(Endorsed:) U. S. circuit court, southern district of New York. In the matter of the application of O. M. Carter. Original citation.

Kellogg, Rose & Smith, att'ys for petitioner, 120 Broadway, New York. A copy of the within paper has been this day received at this office, Oct. 23, 1899. Henry L. Burnett, U. S. attorney. U. S. circuit court. Filed Oct. 23, 1899. John A. Shields, clerk.

1820 United States Circuit Court of Appeals, Second Circuit.

ROSE *ex Rel.* CARTER, Appellant,
*vs.*
ROBERTS, Appellee.

WALLACE, *Circuit Judge:*

This appeal presents for review an order of the circuit court of the United States for the southern district of New York dismissing a writ of *habeas corpus*. The writ was obtained in behalf of Oberlin M. Carter on a petition alleging that the relator was unlawfully imprisoned pursuant to a sentence of a court-martial.

It appears by the record that the relator was a captain in the Corps of Engineers, United States Army, was convicted by the court-martial of four different offences committed by him while in military service of the United States, viz: conspiring to defraud the United States, in violation of the 60th article of war; causing false and fraudulent claims to be made against the United States, in violation of the 60th article of war; conduct unbecoming an officer and a gentleman, in violation of the 61st article of war; and embezzlement, as defined in section 5488 Revised Statutes of the United States, in violation of the 62nd article of war. He was thereupon sentenced by the court-martial to suffer a fine of $5,000; to
1821 be imprisoned at hard labor for five years; to be dismissed from the service of the United States; and to the publication of his crime and punishment as prescribed by statute upon a dismissal for fraud. The findings and sentence of the court-martial were approved by the Secretary of War and confirmed by the President; and before the institution of the proceedings under review the relator had paid the fine imposed by the sentence, and had been dismissed from the service of the United States.

It is not the office of a writ of *habeas corpus* to perform the functions of a writ of error in reviewing the judgment of a court-martial. Courts-martial are tribunals created by Congress in pursuance of the power conferred by the Constitution, and have as plenary jurisdiction of offenses committed to them by the law military as do the circuit and district courts of the United States in the exercise of their statutory powers over other offences. The question of jurisdiction may be reached by such a writ, as it may be when the judgment of any tribunal is attacked; but the range and scope of the inquiry is controlled by the same rules and limitations in either case. There must be jurisdiction to hear and determine, and to render the particular judgment or sentence imposed; but if this exists, however erroneous the proceedings may be, they cannot be reviewed collaterally or redressed by *habeas corpus*. These principles have

been repeatedly declared by the authorities. *In re* Davidson (31 Fed. Rep., 618); *Ex parte* Reed (100 U. S., 13); *In re* Coy (127 U. S., 731); *Ex parte* Yarborough (110 U. S., 651); U. S. *v.* Pridgeon (153 U. S., 59).

It is not contended for the appellant that the court-martial did not have jurisdiction of the person of the accused and of the offences of which he was convicted; but it is insisted that the court transcended its power in the imposition of punishment. More specifically the contention for the appellant is that, while it was within the competency of the court-martial to try and punish the relator for the offences in violation of the 60th article of war of which
1822 he was convicted, the court exceeded its authority when it punished him by fine and imprisonment instead of fine or imprisonment; and that the conviction and sentence for the offence alleged to be in violation of the 62d article of war were void, because the facts charged did not constitute an offence against that article.

If the sentence was in excess of the authority conferred upon the court by the articles of war enacted by Congress, it was to that extent void, as the court would have gone beyond its jurisdiction in imposing punishment. On the other hand, if the authority of the court extended to the punishment of the relator by fine and imprisonment upon his conviction of the two offences in violation of the 60th article of war, the sentence defeats any remedy by the writ of *habeas corpus*, as that remedy reaches only cases of unlawful imprisonment, and it matters not for present purposes whether the authority of the court extended to his conviction and sentence for any other offence. There being no statutory direction upon the subject, usage permits an indefinite number of offenses to be adjudicated together in one proceeding by courts-martial, and the rendition of a single sentence covering all the convictions and imposing punishment accordingly, however separate and distinct may be the different offences, and however different may be the punishments prescribed for them. 1 Winthrop, Military Law, 2nd ed. (219, 614); Davis Military Law (148, 689). It follows that if the sentence is warranted by a conviction of two offences, it is justified to the extent that such offences are punishable.

The 60th article of war declares, among other things, that a person in the military service of the United States "who enters into any agreement or conspiracy to defraud the United States by obtaining, or aiding others to obtain, the allowance of any false or fraud-
1823 ulent claim;" or "who makes, or causes to be made, any claim against the United States, or any officer thereof knowing such claim to be false or fraudulent," * * * "shall on conviction thereof be punished by fine or imprisonment, or by such other punishment as a court-martial may adjudge." The article, besides the two offences mentioned, defines disjunctively eight others, and the language prescribing the punishment is contained in a concluding clause at the end of the enumeration. We entertain no doubt that the concluding clause is to be read distributively, and applies to each of the ten enumerated offences; and that a per-

son convicted of two or more of the ten offences is by its terms punishable for each by fine, or by imprisonment, or by such other punishment as the court-martial may adjudge. Any other construction would attribute to Congress the intention to ignore any distinction between degrees of guilt in punishing crime, and to subject a person guilty of one offence to the same measure of punishment as one guilty of several or of all of the ten offences.

As has been stated, the relator was convicted of two of the offences defined by the 60th article of war. The record presents the charges and specifications upon which he was found guilty of those offences. The charges describe each offence in the language of the article. Whether the specifications support the charges, or the evidence supports the specifications, we are not at liberty to consider. Nor is it open to inquiry whether the two offences were in fact but one and the same criminal act. When properly constituted and convened a court-martial has jurisdiction to hear and determine the question whether the accused is guilty of any of the offences created by the articles of war. This jurisdiction necessarily includes the authority to decide, when the charge preferred against the accused is the commission of one or more of these offences, whether the specifications and the evidence sufficiently exhibit the incriminating facts. As was said by the Supreme Court in Dynes *v.* Hoover (20 How., 1824 65), the sentence (when confirmed by the President) "is altogether beyond the jurisdiction or inquiry of any civil tribunal whatever, unless it shall be in a case in which the court had no jurisdiction over the subject-matter or charge, or one in which having jurisdiction over the subject, it has failed to observe the rules prescribed by statute for its exercise." Having found the relator to be guilty of two offences, the court was empowered by the statute to punish him as to one by fine, and as to the other by imprisonment. The sentence was not in excess of its authority.

It is proper to state that the other punishments imposed upon the relator by the sentence were authorized by the articles of war. The conviction of conduct unbecoming an officer and gentleman was for an offence in violation of article 61; and that article requires that upon conviction the officer be dismissed from the service. The punishment by publication of his crime was authorized by article 100, which provides for such punishment when an officer is dismissed from the service for cause. It is also proper to state that Congress can, if it sees fit, carve out two or more offences from a single criminal transaction, and impose cumulative punishments for the different offences (Commonwealth *v.* Trickey, 95 Mass., 559; United States *v.* Harmison, 3 Sawyer, 556), and if the court-martial convicted the relator of several offences for a single criminal transaction it did not transcend necessarily the power conferred by the 60th article of war.

The appellant has urged the proposition that the relator, having been dismissed from the service, was not thereafter amenable to military authority. If by this it is meant to be said that he was no longer lawfully in custody under the sentence of imprisonment, the proposition has not sufficient color of merit to require discussion.

In dismissing the writ the court below expressed the opinion that the relator was properly convicted by the court-martial of an
1825 offence in violation of the 62d article of war, and that the sentence of imprisonment was supported by such conviction. Without intending to impugn the correctness of this conclusion, we have not considered the question, because in the view we have reached it does not arise. The relator was lawfully restrained of his liberty by the sentence and commitment pursuant to it, because the sentence was warranted both as to fine and imprisonment by his conviction of one offence, subjecting him to punishment by fine, and of another subjecting him to punishment by imprisonment, and both in violation of the 60th article of war.

The order dismissing the writ of *habeas corpus* is affirmed, with costs.

UNITED STATES OF AMERICA, }
*Southern District of New York,* } *ss:*

—, William Parkin, clerk of the United States circuit court of appeals for the second circuit, do hereby certify that the foregoing pages, numbered from 1 to 82, inclusive, contain a true and complete transcript of the record and proceedings had in said court, in the case of Oberlin M. Carter, on petition of A. J. Rose, plaintiff in error, against Benjamin K. Roberts, defendant in error, as the same remain of record and on file in my office.

1826–2050 In testimony whereof, I have caused the seal of the said court to be hereunto affixed, at the city of New York, in the southern district of New York, in the second circuit, this 26th day of January, in the year of our Lord one thousand nine hundred, and of the Independence of the United States the one hundred and twenty-fourth.

[SEAL.] WM. PARKIN, *Clerk.*

(10c. I. R. stamp.)

* * * * * * *

2051 United States Circuit Court for the Southern District of New York.

In the Matter of the Petition of ABRAM J. ROSE for a Writ of *Habeas Corpus.*

And now comes the petitioner, by Kellogg, Rose & Smith, his attorneys, in connection with the petition of appeal from the order and judgment entered October 23, 1899, dismissing the writ of *habeas corpus* herein and directing that Oberlin M. Carter be returned to the custody from which he was taken for the purpose of suffering the punishment imposed by the sentence of a general court-martial, convened by the President of the United States, in pursuance of which general orders No. 172 of the head-
2052–2112 quarters of the army were issued, and makes and files the following assignments of error:

The court erred in holding:

1st. That the said court-martial had jurisdiction to render the sentence imposed.

2nd. That the said Oberlin M. Carter was lawfully restrained of his liberty in and by virtue of the said sentence.

3rd. That the said Oberlin M. Carter was not restrained in his liberty without due process of law, as required by the Constitution of the United States, and that he was not so detained contrary to the provisions of the said Constitution and the laws of the United States.

4th. That said general orders No. 172, headquarters of the army, were sufficient and lawful authority for the imprisonment and detention of the said Oberlin M. Carter in custody.

5th. That charge IV of the charges and specifications charged an offense under the 62nd article of war, and did not charge an offense, if at all, under the 60th article of war.

6th. That said Oberlin M. Carter was amenable to further punishment under the sentence imposed by the court-martial after he had been dismissed from the military service, and the order of his dismissal personally served upon him.

7th. The court erred in dismissing the writ and remanding the prisoner for the reason that it clearly appears that the sentence of the court-martial to imprisonment was void and against the provisions of the Constitution, in that by the sentence of imprisonment the prisoner was punished twice for the same offense.

By reason whereof the petitioner prays that the said order directing that Oberlin M. Carter be remanded to the custody of Captain Benjamin K. Roberts, captain Fifth artillery, at Fort Columbus, be reviewed, and that said Oberlin M. Carter be discharged from custody.

ABRAM J. ROSE, *Petitioner.*

(Endorsed:) U. S. circuit court, southern district of New York. In the matter of the petition of Abram J. Rose for a writ of *habeas corpus* for Oberlin M. Carter. Assignment of errors. Kellogg, Rose & Smith, att'ys for petitioner, 120 Broadway, New York. A copy of the within paper has been this day received at this office, Feb. 26, 1900. Henry L. Burnett, U. S. attorney. U. S. circuit court. Filed Feb. 26, 1900. John A. Shields, clerk.

2113 In the Circuit Court of the United States for the District of Kansas, First Division.

OBERLIN M. CARTER, on the Petition of I. STANTON CARTER, Petitioner,
vs.
ROBERT W. MCCLAUGHRY.

The United States of America to Robert W. McClaughry, warden of the United States penitentiary at Fort Leavenworth, Kansas:

We command you that the body of Oberlin M. Carter, in your custody detained, as it is said, together with the day and cause of

his caption and detention, you safely have before the circuit court of the United States for the district of Kansas, first division, at the United States court-room, in the city of Leavenworth, State of Kansas, on the 26th day of October, A. D. 1900, at 10 o'clock a. m. of said day, then and there to do all and singular those things which the said court shall then and there consider of him in this behalf; and have you then and there this writ.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States; attested by the seal of said court, at Leavenworth, Kansas, this 17th day of October, in the year of our Lord one thousand nine hundred.

GEO. F. SHARITT, *Clerk.*

Endorsed: No. 7849. Oberlin M. Carter, on the petition of I. Stanton Carter, petitioner, *vs.* Robert W. McClaughry. (Copy.) *Habeas corpus.*

*U. S. Marshal's Return.*

Received the original writ, of which this is a copy, on the 17th day of October, A. D. 1900, and executed the same by delivering the said original writ to R. W. McClaughry, the warden of the penitentiary named within, at the city of Leavenworth, Kansas, on the 18th day of October, A. D. 1900.

W. E. STERNE,
*U. S. Marshal,*
By D. N. WILLITS, *Deputy.*

Fees, $2.00, pd. by petitioner.

Filed Dec. 10, 1900.

GEO. F. SHARITT, *Clerk.*

2114 In the Circuit Court of the United States for the District of Kansas.

OBERLIN M. CARTER, on the Petition of I. STANTON CARTER, Petitioner,
*vs.*
ROBERT W. MCCLAUGHRY, Respondent.

Frank P. Blair and C. H. Grosvenor, for petitioner.
John W. Claus, deputy judge advocate general, for respondent.

Before Thayer, circuit judge, and Hook, district judge.

HOOK, district judge, delivered the opinion of the court:

This is a proceeding in *habeas corpus*. The writ having been allowed, the cause arises on petitioner's demurrer to the return thereto. Oberlin M. Carter, who was a captain in the Corps of Engineers of the United States Army, was tried before a general court-martial which convened at Savannah, Georgia, upon four charges of violation of the articles of war and thirty-seven specifications thereunder. He was found guilty of the offenses set forth in

sixteen of the specifications and of the four charges which the specifications supported. In accordance with the practice in such tribunals, the court-martial imposed a lumping sentence and adjudged the accused "to be dismissed from the service of the United States, to suffer a fine of five thousand dollars, to be confined at hard labor at such place as the proper authority may direct for five years, and the crime, punishment, name, and place of abode of the accused to be published in the newspapers in and about the station and in the State from which the accused came or where he usually resides." As required by law, the record of the proceedings before the court-martial was submitted to the President for his action thereon. The President disapproved of the findings of the court-martial as to twelve of the sixteen specifications and approved of the remainder and also of the sentence. The action of the President left in force the findings of guilty under the four charges and one specifi-
2115 cation supporting each charge, and although the determination of the court-martial as to twelve of the specifications was set aside, no diminution was made in the punishment that had been imposed. The Secretary of War thereupon designated the United States penitentiary at Fort Leavenworth, Kansas, as the place of confinement of the prisoner, and he is now in the custody of the warden of that institution, who is the respondent herein. The entire sentence, excepting the service of the term of imprisonment, has been executed—the relator has been dismissed from the service of the United States, he has paid the fine imposed, and the specified publication has been made.

Prior to Carter's removal to the penitentiary at Fort Leavenworth a writ of *habeas corpus* was obtained in his behalf from the circuit court of the United States for the southern district of New York. Upon hearing, the writ was dismissed and he was remanded to the custody of the military authorities (*In re* Carter, 97 Fed., 496). An appeal from the order dismissing the writ was taken to the circuit court of appeals for the second circuit, and that court affirmed the judgment of the circuit court (Rose *v.* Roberts, 99 Fed., 948; 40 C. C. A., 199). A petition for a writ of certiorari to the circuit court of appeals was presented to the Supreme Court and was by that court denied (Carter *v.* Roberts, 176 U. S., 684). At the same time an appeal directly to the Supreme Court and also a writ of error were allowed by a judge of the circuit court, which, upon hearing, were dismissed (Carter *v.* Roberts, 177 U. S., 496). The Supreme Court in dismissing the appeal and proceeding in error did not pass upon the questions affecting the validity of the conviction and sentence of Carter, but held that since an appeal had been prosecuted from the circuit court to the circuit court of appeals, and that court had acted on the whole case, including the constitutional questions connected therewith, the Supreme Court would not entertain a direct appeal from the circuit court in the same cause. In other words, it was held that a defeated party did not have the right to have
2116 his case finally determined in the Supreme Court and in the circuit court of appeals on independent appeals.

Being restrained of his liberty by the respondent pursuant to the

sentence of the court-martial as approved by the President and the action of the Secretary of War thereon, it is contended in behalf of Carter that his imprisonment is in violation of the Constitution of the United States and is otherwise illegal and without warrant of law.

At the threshold of the case counsel for respondent interposes the objection that by reason of the aforementioned proceedings in the courts and the orders and judgments rendered by them respectively the matters sought to be presented by petitioner are *res adjudicata*, and that this court is precluded from re-examining them.

It is true, the merits of Carter's case as presented were considered by the circuit court for the southern district of New York and by the circuit court of appeals for the second circuit, but while the judgments of those courts are recognized as of highly persuasive authority, they do not amount to *res adjudicata* nor prevent a re-examination of the same questions in a subsequent *habeas corpus* proceeding. The action of the Supreme Court was confined to a denial of the application for a writ of certiorari, which is not allowed as a matter of right, and to a dismissal of the appellate proceedings without a consideration of the merits of the case. It is, therefore, the duty of this court to give due consideration to the case presented.

The limited scope of inquiry in a case of this character is well defined by many decisions. A writ of *habeas corpus* cannot be converted into a proceeding in error. A court to which an application is made for the discharge of one restrained of his liberty pursuant to the judgment and sentence of another court cannot inquire whether the evidence was sufficient to warrant a conviction, nor consider whether in the progress of the trial errors were committed by the trial court as to matters within its jurisdiction. In such a case the writ of *habeas corpus* is in effect a collateral attack, and if the court pronouncing the sentence had jurisdiction of the accused and of the offense for which he was tried, and did not exceed its jurisdiction in the imposition of the sentence, the case is not open to further inquiry. Courts-martial are independent tribunals
2117 created by the same authority to which this court owes its existence, and they have as complete power and jurisdiction to judicially determine any cause before them involving offenses under the articles of war as this court has over controversies committed by law to its cognizance. The limitations on the power of this court to inquire into matters connected with the judgments of other civil courts by means of the writ of *habeas corpus* apply with equal force to the judgments of courts-martial. This consideration is sufficient to eliminate a number of petitioner's objections without further discussion.

The charges preferred against Carter before the court-martial, and of which he was found guilty, were: (1) Conspiracy to defraud the United States, in violation of the sixtieth article of war; (2) causing false and fraudulent claims to be made against the United States, in violation of the sixtieth article of war; (3) conduct unbecoming an officer and a gentleman, in violation of the sixty-first article of war; (4) embezzlement, as defined in section 5488, Revised

Statutes of the United States, in violation of the sixty-second article of war.

It is not denied that the court-martial by which Carter was tried had jurisdiction of his person; but it is contended that the finding of guilty under the fourth charge is illegal and void, in that the acts described in the specification supporting the charge are insufficient to constitute the offense, and that they show that the offense, if any was committed, was cognizable under the sixtieth article of war, for the violation of which a less punishment is prescribed than that inflicted; also that the first two charges constitute offenses against the sixtieth article of war, under which the punishment prescribed is fine or imprisonment, in the alternative, but not cumulatively; also that the charges and specifications show that a single act, viz., the drawing of two checks, has been carved up into several distinct and separate crimes and a punishment assessed on each, and that therefore he has been tried more than once for the same offense; also that when the President disapproved of certain of the findings of the court-martial there should have been, by
2118 some competent authority, an appropriate diminution of the sentence as pronounced by that court. No serious contention is made as to the finding of guilty of the third charge, if the proceedings as to any of the other charges are upheld. First, as to the objections connected with the fourth charge, which is that of embezzlement, as defined in section 5488, Revised Statutes of the United States, in violation of the sixty-second article of war. Section 5488, so far as concerns the contention in question, is as follows:

"Every disbursing officer of the United States who * * * for any purpose not prescribed by law transfers or applies any portion of the public money intrusted to him, is, in every such act, deemed guilty of an embezzlement of the money so * * * transferred or applied."

The sixty-second article of war provides that "All crimes not capital, and all disorders and neglects, which officers and soldiers may be guilty of, to the prejudice of good order and military discipline, though not mentioned in the foregoing articles of war, are to be taken cognizance of by * * * court-martial, * * * and punished at the discretion of such court." Sec. 1342, Rev. St.

Were the facts set forth in the specification supporting the fourth charge sufficient to constitute the offense charged and was the conduct described "to the prejudice of good order and military discipline," as required by the sixty-second article of war? The specification set forth that Carter was a disbursing officer of the United States, and that as such officer he was intrusted with certain public money which he wilfully and knowingly caused to be paid on false accounts, the amounts paid not being due or owing from the United States to the parties to whom the payments were made, of which Carter well knew. In my opinion this charges the application of public money to "a purpose not prescribed by law," and, with the details which the specification supplies, constitutes a sufficient indictment under section 5488 of the Revised Statutes. And it may also reasonably be contended that in a larger sense the misappropriation by a

captain in the engineer corps of the army of public money intrusted to him to be used in the construction of works of which he has official charge is conduct prejudicial to good order and
2119 military discipline. But even if petitioner's contention in these respects were well made, it does not show the sentence to be void, but simply that it is erroneous. It was clearly within the province of the court-martial to decide those particular questions—that is to say, whether the money mentioned was or was not applied to a purpose prescribed by law, and whether such a misappropriation under the particular circumstances of the case was or was not prejudicial to good order and military discipline, and its determination thereof, even if erroneous, cannot be reviewed by *habeas corpus*. In *Ex parte* Parks, 93 U. S., 18, the court said: "But the question whether it was or was not a crime within the statute was one which the district court was competent to decide. It was before the court and within its jurisdiction. * * * Whether an act charged in an indictment is or is not a crime by the law which the court administers (in this case the statute law of the United States) is a question which has to be met at almost every stage of criminal proceedings; on motions to quash the indictment, on demurrers, on motions to arrest judgment, &c. The court may err, but it has jurisdiction of the question. If it errs, there is no remedy after final judgment, unless a writ of error lies to some superior court: and no such writ lies in this case." *Ex parte* Yarbrough, 110 U. S., 651; *Ex parte* Bigelow, 113 U. S., 328; Swain *v.* United States, 165 U. S., 561; *In re* Boyd, 49 Fed., 48.

It is also contended that under the sixty-second article of war no charge can be preferred that is embraced in any other article, and that, as the charge is that of embezzlement, it is covered by either the first, fourth, or ninth paragraph of the sixtieth article of war. Assuming but not deciding that no charge can be laid under the sixty-second article of war if it is mentioned in any preceding article, still it is apparent that the embezzlement defined in section 5488, Revised Statutes, is not the offense denounced in either the first or fourth paragraphs referred to, and I am also of the opinion that it is a species of embezzlement different from that defined in the ninth paragraph of the sixtieth article of war, since the money which is the subject of embezzlement under the latter article is "money furnished for
2120 military service," whereas under section 5488 the term money comprehends any public money, whether appropriated for the military service or for other purposes. The offense denounced in section 5488 is much broader and more comprehensive than the other, the former being the application by a disbursing officer of money to any authorized purpose, whilst under the ninth paragraph mentioned the money which is the subject of the embezzlement is money appropriated specifically for the military service, and it is quite probable from the context of the entire paragraph that the term "embezzlement," as there employed, means such an offense as is generally understood where one having the money of another in his custody appropriates it to his own use with felonious intent, intending to deprive the true owner thereof.

The result of these conclusions is that the sentence imposed may be upheld by the conviction under the fourth charge alone, since the punishment authorized by the sixty-second article of war is left to the discretion of the court, subject to the review of the President.

But the decision need not be based upon the regularity of the conviction under the fourth charge alone. There was also a conviction under the first charge for a conspiracy to defraud the United States and a conviction under the second charge for causing false and fraudulent claims to be made, such charges being the subjects of the first and third paragraphs of the sixtieth article of war. I am in entire accord with Judge Wallace, who delivered the opinion of the circuit court of appeals for the second circuit, that under the sixtieth article it was competent to impose a fine for one charge of which the accused was found guilty, and imprisonment for the other. Therefore the entire sentence as ultimately pronounced and confirmed can be sustained under the sixtieth article of war without reference to the sixty-second, and for that reason no relief is possible by the writ of *habeas corpus*. Every presumption must be indulged in in favor of the judgment of the court-martial; and even if the conviction under the fourth charge were void, it should be presumed that the fine relates to the conviction under one of the first two charges and the imprisonment under the other. 212:1 Under the procedure of courts-martial it was not required to be stated that the fine was imposed for conspiracy and the imprisonment for the causing of false and fraudulent claims to be made, or *vice versa*. If the court might have imposed sentence in that manner it must be presumed that it did so impose it.

Nor is the contention well made that Carter committed but one offense, which has been split up into several charges and punishment inflicted therefor.

A "conspiracy to defraud," as alleged in the first charge, and "causing false and fraudulent claims to be made," as alleged in the second charge, and "the statutory embezzlement under section 5488," as alleged in the fourth charge, are separate and distinct offenses dependent upon different facts and requiring different proof, and therefore it cannot be said that for the same act the accused has been tried and punished three times. The mere fact that certain acts of the accused are set out in all of the specifications supporting the three charges does not destroy the distinctive character of the offenses charged.

It is also contended that since Carter was found guilty under sixteen specifications, and upon review thereof by the President twelve were set aside, but no change was made in the sentence imposed by the court-martial, the sentence is void. The punishment prescribed by the articles of war is attached to the charges and not to the specifications made thereunder, the latter being merely by way of exemplification and detailed statement of the principal charges to which they respectively relate; but even if this were not so, the rule is well established that where a sentence in gross is pronounced upon a conviction under an indictment containing several counts

and upon appeal or review some of them are held bad and the others are sustained, the sentence will not be disturbed, provided it is such as could lawfully have been imposed under the counts which are upheld. Evans *v.* United States, 153 U. S., 584; Claasen *v.* United States, 142 U. S., 140; Haynes *v.* United States, 101 Fed., 817 (C. C. A.); Jewett *v.* United States, 100 U. S., 832; Peters *v.* United States, 94 Fed., 127; 36 C. C. A., 105.

In this case what was confirmed by the President is suffi-
2122 cient under the law to justify the punishment inflicted. This disposes of all of the objections that merit consideration. The writ of *habeas corpus* will therefore be dismissed and the petitioner, Oberlin M. Carter, is remanded to the custody of the respondent.

THAYER, circuit judge: I concur in the foregoing opinion.

Endorsed: No. 7849. Oberlin M. Carter, on the petition of I. Stanton Carter, petitioner, *vs.* Robert W. McClaughrey, respondent. Opinion. Filed Dec. 10, 1900. Geo. F. Sharitt, clerk.

2123 UNITED STATES OF AMERICA, *District of Kansas*, } *ss*:

At a term of the circuit court of the United States of America for the district of Kansas, began and held at the city of Topeka, in said district, on Monday, the 26th day of November, A. D. 1900, proceedings were had and appear of record in words and figures as follows, to wit:

Present: Hon. William C. Hook, judge.

MONDAY, *December 10th*, 1900.

OBERLIN M. CARTER, on the Petition of I. STANTON CARTER, Petitioner, *vs.* ROBERT W. MCCLAUGHRY, Respondent. } 7849.

A writ of *habeas corpus* having been allowed herein on the 17th day of October, A. D. 1900, directed to Robert W. McClaughry, warden of the United States penitentiary at Fort Leavenworth, Kansas, commanding him to produce the body of said Oberlin M. Carter, before this court, and on November 23, 1900, return having been duly made and filed to said writ, and the said Oberlin M. Carter having been produced in compliance with said writ, said cause came on for hearing upon petitioner's oral motion to discharge the said Oberlin M. Carter, based upon the averments of respondent's return, no evidence having been offered or considered by the court. The petitioner appeared by the Honorable C. H. Grosvenor and Frank P. Blair, Esq., and the respondent appeared by J. W. Clous, deputy judge advocate general, and I. E. Lambert, United States district attorney. After hearing the arguments of counsel the court took the matter under advisement.

Now, on this 10th day of December, 1900, the court having fully

considered the matter and being advised in the premises, it is ordered by the court that the writ of *habeas corpus* herein be discharged; and it is further ordered that the said Oberlin M. Carter be remanded to the custody of Robert W. McClaughry, warden of the United States penitentiary at Fort Leavenworth, Kansas.

WILLIAM C. HOOK, *Judge.*

2124 In the Circuit Court of the United States for the District of Kansas.

OBERLIN M. CARTER, on the Petition of I. STANTON CARTER, Petitioner and Appellant,
*vs.*
ROBERT W. MCCLOUGHRY, Respondent and Appellee.

The above-named petitioner, conceiving himself aggrieved by the order and judgment entered on December tenth, A. D. 1900, in the above-entitled cause, doth hereby appeal from said order and judgment to the Supreme Court of the United States, and he prays that this his appeal may be allowed, and that a transcript of the record and proceedings and papers upon which said order and judgment were made, duly authenticated, may be sent to the Supreme Court of the United States.

And the said petitioner presents herewith his assignment of errors, as required by rule 35 of the Supreme Court.

FRANK P. BLAIR,
*Att'y for Petitioner and Appellant,*
*99 Randolph Str., Chicago, Illinois.*

Dec. 10, 1900.

Appeal allowed as prayed for.
WILLIAM C. HOOK, *Judge.*

Endorsed: No. 7849. Oberlin M. Carter, on the petition of I. Stanton Carter, petitioner, *vs.* Robert W. McClaughrey. Petition for appeal. Filed Dec. 10, 1900. Geo. F. Sharitt, clerk.

2125 In the Circuit Court of the United States for the District of Kansas.

OBERLIN M. CARTER, on the Petition of I. STANTON CARTER, Petitioner & Appellant,
*vs.*
ROBERT W. MCCLOUGHREY, Respondent and Appellee.

*Assignment of Errors.*

Comes now I. Stanton Carter, the above-named petitioner, by Frank P. Blair, his attorney, and, in connection with his prayer for an appeal from the judgment of the said circuit court to the Supreme Court of the United States, says that in the record and proceedings in the above-entitled cause there is manifest error in this—that is to say:

I.

That the sentence imposed by the court-martial on which said Oberlin M. Carter is detained in the penitentiary at Fort Leavenworth, Kansas, is in violation of the fifth amendment to the Constitution of the United States in this, that by said sentence said Carter has been more than once put in jeopardy for the same offense.

II.

That said sentence of imprisonment is void because the said court-martial had no power to inflict the same under the 60th article of war.

III.

That said court-martial had no jurisdiction to sentence said Carter under the 62nd article of war.

IV.

That said sentence of imprisonment is void because the same is in excess of the limits fixed by the President of the United States, under the law, for the offenses with which said Carter was charged.

2126–2128

V.

That the entire sentence is void because the same differs from and exceeds that imposed by said court-martial.

VI.

That said sentence of imprisonment is void because the same was fixed by said court-martial to begin after said Carter had ceased to be subject to the rules and articles of war, and subject to the jurisdiction of said court-martial.

VII.

That said circuit court erred in not discharging said Carter upon the return to the writ herein.

Wherefore the said petitioner prays that the order and judgment of said circuit court be reversed, and said court be ordered to enter an order directing the said Oberlin M. Carter to be discharged from custody.

FRANK P. BLAIR,
*Att'y for Petitioner and Appellant,*
*99 Randolph Street, Chicago, Ill.*

Endorsed: No. 7849. Oberlin M. Carter, on the petition of I. Stanton Carter, petitioner, *vs.* Robert W. McClaughrey, respondent. Assignment of errors. Filed Dec. 10, 1900. Geo. F. Sharritt, clerk.

2129 In the Circuit Court of the United States for the District of Kansas.

OBERLIN M. CARTER, on the Petition of I. STANTON CARTER, Appellant,
*vs.*
ROBERT W. McCLAUGHRY, Appellee.

*Motion.*

Now comes the above-named appellant and moves the court for leave to file additional and amended assignment of errors as follows:

First. "That the sentence imposed by the court-martial on which said Oberlin M. Carter is detained in the penitentiary at Fort Leavenworth, Kansas, is in violation of the 102nd article of war in this, that by said sentence said Carter has been more than once put in jeopardy and punished for the same offense."

Second. "That the court-martial had no jurisdiction to try and impose sentence under charge four and the specifications supporting the same.

JNO. H. ATWOOD AND
W. W. HOOPER,
*Attorneys for Petitioner and Appellant.*

Endorsed: No. 7849. Motion to file amendment to assignment of errors. Filed Feb. 9, 1901. Geo. F. Sharitt, clerk.

2130 In the Circuit Court of the United States for the District of Kansas.

OBERLIN M. CARTER, on the Petition of I. STANTON CARTER, Appellant,
*vs.*
ROBERT W. McCLAUGHRY, Appellee.

*Order.*

Upon the application of the appellant and for good cause shown, leave is hereby given the appellant to file additional and amended assignments of error herein, as moved for in his motion heretofore filed herein.

Dated February 9th, 1901.

WILLIAM C. HOOK, *Judge.*

Endorsed: No. 7849. Order. Leave to applicant to file additional assignment of errors. Filed Feb. 11, 1901. Geo. F. Sharitt, clerk.

2131 In the Circuit Court of the United States for the District of Kansas.

OBERLIN M. CARTER, on the Petition of I. STANTON CARTER, Appellant,
*vs.*
ROBERT W. McCLAUGHRY, Appellee.

*Additional Assignments of Error.*

Now comes the appellant and, by leave of court first had and obtained, files the following as amendment to and additional assignment of errors herein:

First. That the sentence imposed by the court-martial on which said Carter is detained in the penitentiary at Fort Leavenworth, Kansas, is in violation of the 102nd articles of war in this, that by said sentence said Carter has been more than once put in jeopardy and punished for the same offense.

Second. That the court-martial had no jurisdiction to try and impose sentence under charge four and the specifications supporting the same.

FRANK P. BLAIR,
JEREMIAH WILSON,
JNO. H. ATWOOD, AND
W. W. HOOPER,
*Attorneys for Petition- and Appellant.*

Endorsed: No. 7849. Additional assignment of errors. Filed Feb. 11, 1901. Geo. F. Sharitt, clerk.

2132 UNITED STATES OF AMERICA, *District of Kansas,* } *ss:*

I, Geo. F. Sharitt, clerk of the circuit court of the United States of America for the district of Kansas, do hereby certify the foregoing to be a true, full, and correct copy of the record and proceedings in said court in a case wherein Oberlin M. Carter, on the petition of I. Stanton Carter, is petitioner and Robert W. McClaughry is respondent, being No. 7849 in said court.

I further certify that the original citation is hereto attached and returned herewith.

The Seal of the Circuit Court of the United States, District of Kansas, 1862.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at my office in Topeka, in said district of Kansas, this 9th day of February A. D. 1901.

GEO. F. SHARITT, *Clerk.*

{ Ten-cent United States internal-revenue stamp, canceled Feb. 9, '01. G. F. S. }

2133 567. 18052.

In the Supreme Court of the United States, October Term, 1900.

I. STANTON CARTER (on Behalf of OBERLIN M. CARTER), Appellant,
*v.*
ROBERT W. MCCLAUGHRY, Warden of the United States Penitentiary at Fort Leavenworth, Kansas. } No. 567.

Comes now the above-named appellant, by his attorney, and, in pursuance of the rules of practice of this court in such case made and provided, hereby designates the following parts of the record on file herein as parts thereof to be printed and which he thinks necessary for the consideration of said cause:

| | | |
|---|---|---|
| Original citation and acknowledgement of service | p. | 1 |
| Application for writ of *habeas corpus* | pp. | 2–37 |
| Order for issuance of writ of *habeas corpus* | p. | 38 |
| Amendment to petition | pp. | 40, 41 |
| Indictment in the case of United States *v.* Green *et al.*, U. S. district court, eastern division, southern district, Georgia | pp. | 42–61 |
| Return of Robert W. McClaughry | pp. | 62–65 |
| Exhibit A to said return (being general orders No. 172, War Department) | pp. | 1412–1447 |
| Exhibit ½ A to said return | p. | 1449 |
| Marshal's return to writ of *habeas corpus* | p. | 2113 |
| Opinion of the court | pp. | 2114–2122 |
| Order remanding petitioner | | 2123 |
| Petition for appeal and allowance thereof | p. | 2124 |
| Assignment of errors | pp. | 2125, 2126 |
| Appellant's motion for leave to file additional assignments of error | p. | 2129 |
| Order granting such leave | p. | 2130 |
| Additional assignments of error | p. | 2131 |
| Clerk's certificate | p. | 2132 |

The appellant further hereby designates the following as the parts of the record to be omitted in printing:

| | | |
|---|---|---|
| Stipulation that body of petitioner need not be produced at hearing | p. | 39 |
| 2134 Exhibit A to petition for writ of *habeas corpus* | pp. | 66–1411 |

The following exhibits to the return of respondent:

| | | |
|---|---|---|
| B | pp. | 1450–1487 |
| C | pp. | 1488–1497 |
| D | pp. | 1498–1511 |
| E | pp. | 1512–1515 |
| F | pp. | 1516–1595 |
| G | pp. | 1596–1659 |

H..... pp. 1660–1727
I..... pp. 1728–1739
J..... pp. 1740–1827
K..... pp. 1828–2006
L..... pp. 2007–2106
M..... pp. 2107–2112
Bond on appeal to Supreme Court of the United States..... p. 2127

The appellant further hereby designates (without again repeating the same at length herein) as the assignments of error upon which he intends to rely at the hearing in this case the assignments of error and the additional assignments of error above referred to and herein designated to be printed.

I. STANTON CARTER,
By J. M. WILSON, *Attorney.*

Service of a copy of above notice acknowledged.
JOHN K. RICHARDS,
*Solicitor General.*

H.

February 23, 1901.

[Endorsed:] 567. 18052. Feb. 23, 1901.
2135 [Endorsed:] File No., 18052. Supreme Court U. S., October Term, 1900. Term No., 567. I. Stanton Carter (on behalf of Oberlin M. Carter), app't, *vs.* R. W. McClaughry, warden, &c. Designation by appellant of parts of record to be printed. Office Supreme Court U. S. Filed Feb. 23, 1901. James H. McKenney, clerk.

2136 In the Supreme Court of the United States, October Term, 1900.

I. STANTON CARTER (on Behalf of OBERLIN M. CARTER), Appellant,
*vs.*
ROBERT W. MCCLAUGHRY, Warden of the United States Penitentiary at Fort Leavenworth, Kansas. } No. 567.

In the above-entitled cause, in addition to the parts of the record which the counsel for the appellant has designated under rule 10, section 9, he desires to have printed, the Government desires that the following shall be printed:

Part of Exhibit A to return..... p. 1448
Exhibit J, transcript of record in the Supreme Court of the U. S. from the circuit court of appeals, Carter *vs.* Roberts..... pp. 1740 to 1826
(With the exception of general orders No. 172, War Department, on pages 1754 to 1796.)
Assignment of errors..... pp. 2051, 2052

J. K. RICHARDS,
*Solicitor General.*

[Endorsed:] 567. 18052. Mar. 18, 1901. Designation by appellee under sec. 9, rule 10.

2137 [Endorsed:] File No., 18052. Supreme Court U. S., October term, 1900. Term No., 567. I. Stanton Carter (on behalf of O. M. Carter), app't, *vs.* R. W. McCaughry, warden, &c. Designation by appellee of additional parts of record to be printed. Filed Mar. 18, 1901.

2138 In the Supreme Court of the United States, October Term, 1900.

I. STANTON CARTER (on Behalf of OBERLIN M. CARTER), Appellant,
*vs.*
ROBERT W. MCCLAUGHRY, Warden of the United States Penitentiary at Fort Leavenworth, Kansas. } No. 567.

*Stipulation.*

It is hereby stipulated by counsel for the parties to the above-entitled cause that the portions of the record omitted in accordance with rule 10, section 9, may be referred to by counsel and the court, and such papers or any portion thereof as may be desired by the court in the consideration of this case shall be printed by the appellant.

JEREMIAH M. WILSON,
*Counsel for the Appellant.*
J. K. RICHARDS,
*Solicitor General, for the Appellee.*

[Endorsed:] 567. 18052. Mar. 18, 1901. Stipulation of counsel as to portions of record omitted under sec. 9, rule 10.

2139 [Endorsed:] File No., 18052. Supreme Court U. S., October term, 1900. Term No., 567. I. Stanton Carter (on behalf of O. M. Carter), app't. *vs.* R. W. McCaughry, warden, &c. Stipulation of counsel as to portions of record omitted under section 9, rule 10. Filed Mar. 18, 1901.

Endorsed on cover. File No., 18052. Kansas C. C. U. S. Term No., 567. I. Stanton Carter (on behalf of Oberlin M. Carter), appellant, *vs.* Robert W. McClaughry, warden of the United States penitentiary at Fort Leavenworth, Kansas. Filed February 14th, 1901.